

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
“ 29**

TRANSCARE NEW YORK, INC. [\[1\]](#)

Employer

and

Case Nos. 29-RC-11482
29-RC-11483
29-RC-

**LOCAL 1181-1061, AMALGAMATED
TRANSIT UNION, AFL-CIO**

Petitioner

and

**TRANSPORT WORKERS UNION OF
AMERICA, AFL-CIO, LOCAL 100**

Intervenor

**REGIONAL DIRECTOR’S DECISION AND
DIRECTION OF ELECTION**

TransCare New York, Inc., herein called the Employer, is engaged in the medical transportation business. Local 1181-1061, Amalgamated Transit Union, AFL-CIO, herein called the Petitioner, filed three representation petitions under Section 9(c) of the National Labor Relations Act, herein called the Act, seeking elections in the following three bargaining units: [\[2\]](#)

Case No. 29-RC-11482:

All full-time and regular part-time Paratransit drivers and dispatchers employed by the Employer out of its 106-15 Foster Avenue, Brooklyn, New York facility, **BUT EXCLUDING** all guards, managers and supervisors as defined in the Act.

Case No. 29-RC-11483:

All full-time and regular part-time ambulance drivers, EMT’s, and dispatchers employed by the Employer out of its 106-15 Foster Avenue, Brooklyn, New York facility, **BUT EXCLUDING** all guards, managers and supervisors as defined in the Act.

Case No. 29-RC-11484:

All full-time and regular part-time ambulette drivers and dispatchers employed by the Employer out of its 106-15 Foster Avenue, Brooklyn, New York facility, **BUT EXCLUDING** all guards, managers and supervisors as defined in the Act.

Transport Workers Union of America, AFL-CIO, Local 100, herein called the Intervenor, intervened with respect to all three petitions, based on a showing of interest.

A hearing was held before Michael B. Berger, a Hearing Officer of the National Labor Relations Board, herein the Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

At the hearing, the Petitioner took the position that the Intervenor is not a labor organization within the meaning of Section 2(5) of the Act. The Employer and Intervenor took the contrary position. All parties stipulated to the labor organization status of the Petitioner.

Further, the Employer took the position that the three bargaining units sought by the Petitioner are inappropriate. According to the Employer, “the only appropriate unit consists of a multi-facility, ‘wall-to-wall’ unit that includes all drivers engaged in the Company’s medical transportation business providing critical care inter-facility transport, advanced life support transportation, basic life support transportation, and ambulette and Paratransit transportation, as well as dispatchers, turnout coordinators and mechanics, located at TransCare’s Brooklyn, Manhattan, White Plains, Mount Vernon and Amityville facilities, excluding all guards, clerical workers, and supervisors as defined in the Act.”^[3] In addition, the Employer takes the position that the unit should also include all paramedics and Emergency Medical Technicians (“EMT’s”) employed in the various locations and divisions of the Employer.

The Petitioner and Intervenor contend that the petitioned-for bargaining units are appropriate.

The parties did not take specific positions as to whether or not the following job categories should be included in the bargaining unit: call-takers, vehicle transporters, Unimet helpers, Unimet on-site coordinators, and Ambulance Transport field training officers.

The Employer's witnesses were James O'Connor, Senior Vice President for Operations, Maryanne Sawyer, an Operations supervisor and field supervisor, Donald Cardone, Vice President for Quality Assurance and Compliance, and Jeffrey Pitonza, Director of Operations for the New York City Division.

The Petitioner's witnesses included Eric Bonaventure and Neville Keddo, Paratransit drivers, Juan Rosado, an EMT in the Ambulance Transportation division, and Calvin Ward, who was a Unimet driver from May 17, 2001, until his termination on August 13, 2007. Bonaventure drove for Unimet in 2005, before becoming a Paratransit driver.

In addition, the Hearing Officer called Joseph Carbon, International Organizing Representative for Transport Workers Union International, as his witness regarding the labor organization status of the Intervenor.

Finally, numerous documents were offered into evidence, primarily by the Employer. Certain payroll records, ultimately produced by the Employer pursuant to a subpoena, were not offered into evidence or specifically described on the record.

The Intervenor did not call witnesses, or file a brief. The Employer^{[\[4\]](#)} and the Petitioner filed briefs.

I have considered the evidence and the arguments presented by the parties. As discussed below, I have concluded that the Intervenor is a labor organization, and that the petitioned-for bargaining unit in Case No. 29-RC-11482 is an appropriate one. I have further concluded that the bargaining unit set forth in Case No. 29-RC-11484 is appropriate, with the addition of the Unimet helpers.

Finally, I have concluded that the bargaining unit in Case Nos. 29-RC-11483 is not appropriate, and that the smallest appropriate unit encompassing the petitioned for bargaining unit would be the following:

All full-time and regular part-time Ambulance Transportation Division and Special Operations ambulance drivers, EMT's, paramedics, and dispatchers employed by the Employer at its facilities located at 106-15 Foster Avenue, Brooklyn, New York, 1249 5th Avenue, New York, New York, and 154 East 3rd Street, Mount Vernon, Westchester County, New York, and all full-time and regular part-time turnout coordinators employed by the Employer at its facility located at 106-15 Foster Avenue, Brooklyn, New York, **BUT EXCLUDING** all other employees, all employees employed at the facilities located at 32 Ranick Drive West, Amityville, New York, and 20 Ferris Avenue, White Plains, New York, all employees employed by the Paratransit Transportation Division, the Unimet Ambulette Wheelchair Division and the 911/EMS Division, and all mechanics, call-takers, vehicle transporters, and field training officers, guards, managers and supervisors as defined in the Act.

Since the Petitioner has not indicated whether it is willing to proceed in the units I have found appropriate in Case Nos. 29-RC-11483 and 29-RC-11484, [\[5\]](#) the Petitioner and will be given a reasonable period of time to decide whether to proceed, and both the Petitioner and the Intervenor will be given a reasonable period of time to secure an adequate showing of interest in the enlarged units I have found appropriate in Case Nos. 29-RC-11483 and 29-RC-11484.

The facts and reasoning in support of my conclusions are set forth below.

FACTS

LABOR ORGANIZATION STATUS OF INTERVENOR

Carbon, the International Organizing Representative for Transport Workers Union International (“the International”), testified that the International is the Intervenor’s parent union. The Intervenor represents 35,000 employees employed by the New York City Transit Authority, and has also organized the employees of Royal Coach, Liberty Lines, Queens Bus Company, Triboro Coach, and American Ambulette. Carbon is a member of the Intervenor.

Carbon asserted that the Intervenor exists, at least in part, for the purpose of dealing with employers concerning working conditions, labor disputes, rates of pay and hours of employment. The Intervenor negotiates contracts with employers, and enforces them on behalf of its members. Further, employees participate in the Intervenor, by attending meetings that are usually held once a month, and by voting in internal elections for officers. Accordingly, I find that the Intervenor is a labor organization as defined in Section 2(5) of the Act.

THE APPROPRIATE BARGAINING UNITS

CORPORATE STRUCTURE

The record reflects that the Employer, TransCare New York, Inc. is a subsidiary of TransCare Corporation, which has divisions throughout the United States. TransCare Corporation’s corporate headquarters is located at 5811 Foster Avenue, in Brooklyn (“the Foster Avenue facility”). An organizational chart offered into evidence by the Employer indicates that TransCare New York is divided into two parts: New York Ambulance Operations and New York Non-Ambulance Operations.

Within New York Non-Ambulance Operations are the Unimet Ambulette Wheelchair Division (“Unimet”) and the Paratransit Transportation Division, or TC Paratransit (“Paratransit”).^[6] Paratransit only operates out of a facility located at 106-15 Foster Avenue, Brooklyn, New York, referred to by witnesses as “the Bank Street facility.”^[7] Paratransit does not operate out of any of the Employer’s other five facilities.

Although Unimet primarily operates out of the Bank Street facility, O’Connor testified that the Employer also operates ambulettes out of two other facilities, located at 32 Ranick Drive West, Amityville, Suffolk County, Long Island, New York (“the Amityville facility”)^[8] and 154 East 3rd Street, Mount Vernon, Westchester County, New York (“the Mount Vernon facility”).^[9]

Within New York Ambulance Operations are the Ambulance Transportation Division and the 911/EMS (Emergency Medical Services) Division. Ambulance Transportation Division employees report to four turnout locations: the Bank Street facility, Manhattan Turnout at 1249 5th Avenue, New York, New York (“the Manhattan facility”),^[10] the Mount Vernon facility and the Amityville facility.

The 911/EMS Division encompasses New York City EMS and Westchester EMS. New York City EMS has ambulances stationed at hospitals within New York City’s 911 system. Westchester EMS, located at 20 Ferris Avenue, White Plains, New York (the “White Plains facility”), oversees ambulances that respond to 911 emergencies within New Rochelle, White Plains, and Mount Pleasant, all located in Westchester County, New York.

In addition, Special Operations provides ambulances at special events and large gatherings, such as baseball games at Yankee Stadium. It appears from the record that

Special Operations employees report to the turnout locations for the Ambulance Transportation Division. There was conflicting testimony as to whether Special Operations is a separate division, or part of the Ambulance Transportation Division.

The Employer's organizational chart also sets forth the following shared services: the Call Center, Fleet Maintenance, Dispatch, Human Resources and Payroll, Logistics, and Building Maintenance. There are three locations for Fleet Maintenance: the Foster Avenue facility, the Mount Vernon facility, and the Amityville facility. Human Resources and Payroll are in the Foster Avenue and Bank Street facilities. The Call Center and Logistics are in the Foster Avenue facility, and Building Maintenance is at the Bank Street location.

With regard to the Dispatch Center, Pitonza testified that all of the Employer's dispatchers operate out of the Bank Street facility. However, the Employer's organizational chart reflects that there are two Dispatch locations, at both the Foster Avenue and Amityville facilities. In addition, an exhibit showing permanent transfers within the company during the period from January 1, 2007, until July 31, 2007, reflects that two Amityville EMT's became Amityville dispatchers during this period. No further evidence was submitted regarding the dispatchers at the Amityville facility.

Finally, a number of witnesses made reference to "Operations," the "Operations window," the "Operations box," and "Operations supervisors," and some of the Employer's exhibits reference "Operations Management." "Operations" and related terms were not specifically defined.

FUNCTIONS AND SKILLS

PARATRANSIT TRANSPORTATION DIVISION

The Employer's Paratransit Transportation Division ("Paratransit") has been in existence since October, 2006. It provides "curb to curb" transportation services pursuant to a contract with the New York State Metropolitan Transportation Authority ("MTA"), in connection with the MTA's "Access-A-Ride" program. The Paratransit drivers pick up elderly and/or disabled customers at curbside at a prearranged time, and help the customers enter the vehicles. They then transport them to destinations throughout New York City, such as doctors' offices, clinics, stores, jobs, restaurants, and theaters.^[11] Bonaventure estimated that 20% to 25% of his pickups are for medical appointments.

O'Connor testified that the Employer handles 80 or 85 Paratransit routes on weekdays, and fewer routes on the weekends. He estimated that there are about 103 Paratransit vehicles at the Bank Street facility. It appears from the record that there are close to 160 Paratransit employees.

The manifests for the various routes originate with the MTA, which regulates all aspects of Paratransit work. The Paratransit vehicles driven by the Employer are provided by the MTA, which owns the vehicles, whereas the Employer's other divisions purchase their own vehicles and equipment. In addition, Bonaventure testified that the MTA reimburses the Employer for gasoline, which is purchased with a Paratransit gas card.

All Paratransit drivers report to a separate Paratransit trailer at the Bank Street facility, where they pick up their manifests, vehicle keys and Nextels. The Paratransit vehicles are parked behind the Paratransit trailer, in a separate area from the ambulances and ambulettes. The Paratransit vehicles are multiple-passenger, modified vans with lettering on the outside that says, "Access-A-Ride" and "TC Paratransit." Each

Paratransit van has five stationary seats and brackets for two wheelchairs. The vans contain hydraulic lifts, wheelchair tie-downs, First Aid kits, fire extinguishers, and reflective triangles. Each Paratransit vehicle is manned by just one driver.

Paratransit Drivers - Daily Routine

Bonaventure testified that at the beginning of his shift, he punches in and picks up his manifest at the Paratransit trailer, at the Bank Street facility. He then inspects his vehicle, fills out a vehicle inspection form, gives it to a Paratransit supervisor to sign, and starts making pick-ups and drop-offs. The manifests include the name, time and location of each pick-up. Keddo stated that there are always 13 customers on his manifest. On some days, the dispatcher assigned to him for the day inserts one or two additional trips.

Bonaventure testified that when he picks up a customer, he writes the time and the mileage on the manifest. The customer signs a receipt, indicating the times he was picked up and dropped off. Bonaventure signs the receipt as well, and gives the customer a copy. In addition, when the customer is picked up, he has to show Bonaventure an ID, and pay a \$2.00 fare. If the customer has a personal care attendant, the attendant does not have to pay.

At the end of his shift, Bonaventure gives the fares to the dispatcher, as well as his paperwork regarding any customer no-shows and added trips. In addition, the Paratransit drivers have to turn in a post-trip vehicle inspection report, as well as their trip tickets, mileage, and gasoline receipts.

The Paratransit drivers contact their dispatchers every time they complete a call and are on their way to the next call. In addition, they contact their dispatchers when there are traffic delays, or when a customer is not at the pick-up location.

UNIMET AMBULETTE WHEELCHAIR DIVISION

O'Connor testified that Unimet is the Employer's wheelchair transportation division. It operates wheelchair vans, also referred to as ambulettes, which have secure seats, wheelchair tie-downs and ramps,^[12] and say, "Unimet" on the side. The customers for ambulette services include hospitals, nursing homes and individual patients. Ward testified that as a Unimet driver, most of the people he transported had illnesses or disabilities. Like O'Connor, he referred to them as "patients."

In contrast with the Paratransit Division, which provides curb-to-curb transportation services, employees in the Unimet division enter the residences of patients, to assist them in getting safely and securely into an ambulette. Ward estimated that about 60% of the patients are able to come downstairs by themselves, and the remaining patients are in wheelchairs or need assistance coming downstairs. Typically, Ward transported patients between their homes and their doctors' offices, or to nursing homes, hospitals and clinics. The patients were entitled to bring an aide or relative with them.

The Employer's Policy and Procedures Manual sets forth patient care standards of conduct for ambulette employees. These standards consist of instructions for assisting patients into and out of ambulettes, and securing wheelchairs.

The record reveals that there are 25 to 30 Unimet vehicles and "approximately 33" Unimet drivers at the Bank Street facility.^[13] The record does not disclose how many Unimet drivers or vehicles there are at the Employer's Amityville or Mount Vernon locations.

Unimet Drivers' Daily Routine

Ward testified that as a Unimet driver, he clocked in at the Bank Street location. Before and after his shift, he checked his vehicle, using a check-list, to ensure that everything was in working order, including the wheelchairs, wheelchair tie-downs, seatbelts and tires. His supervisor, Robert Eley, gave him his vehicle keys and a manifest, which contained a list of anywhere from 10 to 25 patients each day. According to O'Connor, however, the Unimet drivers get a list of prescheduled trips from a "turnout person," in addition to getting their assignments from the Dispatch Center.

According to O'Connor, the ambulette drivers are in communication with their dispatchers throughout the day. Ward testified that he contacted the Dispatch Center on his two-way radio when there was an accident, a mechanical problem, or a patient who did not respond at the door.

At the end of his shift, Ward turned in his paperwork, including forms signed by each patient, to whomever was at the Operations window. According to Ward, this could be either a Unimet person or an EMT.

Elite Unimet Drivers

Ward testified that he and about five other Unimet drivers were considered "Elite" drivers. As an Elite driver, he was assigned to a particular hospital, first Saint Mary's and then Brooklyn Hospital. Unlike the hourly drivers, who drove longer distances, Ward would make calls in the local area of the hospital to which he was assigned, largely driving patients to and from that hospital. During Ward's last two months, however, he worked the night shift, picking up discharged patients at hospitals throughout the five boroughs of New York City.

Unimet Helpers

Pitonza testified that some of the Unimet vans are staffed by two employees, a driver and a helper. The helpers help carry patients up and down stairs, and assist patients in wheelchairs. Usually, the helpers are employees awaiting the finalization of their required certifications for being a Unimet driver. Pitonza did not indicate how many helpers are employed by the Unimet Division. Ward estimated that five or six Unimet drivers have regular partners, but stated that most Unimet drivers drive alone.

The parties did not specifically take positions on whether Unimet helpers should be included in the bargaining unit.

Unimet On-Site Coordinators

Pitonza testified that the Unimet on-site coordinators “report to different hospitals that are large accounts. They would facilitate running upstairs to bring patients back down to the curb to facilitate faster packaging of the patients. They would also get on the ambulette to go with the driver to do a lift-up, if needed.” The record does not disclose how many on-site coordinators are currently employed in the Unimet division. The parties did not specifically take positions on whether they should be included in the bargaining unit.

AMBULANCE TRANSPORTATION DIVISION

The Ambulance Transportation Division provides ambulance services to hospitals, clinics, nursing homes and private individuals, for both emergencies and non-emergencies such as prescheduled doctors’ appointments. According to O’Connor, the ambulance crews turning out from Bank Street consist of two Emergency Medical Technicians (“EMT’s”), an EMT and a paramedic, or two paramedics. However, Rosado testified that paramedics never drive, and are always paired with EMT’s who drive the

ambulances. Although the Petitioner seeks to represent both EMT's and ambulance drivers, there is no evidence that there are any ambulance drivers who are not EMT's as well.

O'Connor testified that at Bank Street, there are about 65 to 70 ambulances. The record reflects that "approximately 172" Ambulance Transportation Division EMT's turn out of the Bank Street facility, and approximately 50 EMT's turn out of the Manhattan facility. In addition, an unspecified number of EMT's turn out of the Mount Vernon and Amityville facilities. The approximate number of paramedics working for the Ambulance Transportation Division, or for the four turnout facilities comprising the division, was not disclosed.

There are two types of ambulances, Basic Life Support ("BLS") and Advanced Life Support ("ALS") ambulances.

Basic Life Support ("BLS")

The Employer's BLS ambulances are equipped with oxygen tanks, oxygen tubing, masks, splints, bandages, blood pressure cuffs, stethoscopes, burn packages, and obstetrical kits, in accordance with New York State Department of Health regulations. The BLS ambulances are staffed by EMT's, who are certified to provide Basic Life Support services. These include monitoring patients' vital signs, administering oxygen, performing CPR, controlling bleeding, delivering babies, spinal immobilization and splinting.

Rosado, who is currently assigned to a BLS ambulance with another EMT, testified that the majority of their assignments are non-emergency calls, which involve picking up patients at hospitals or clinics. The remainder of their assignments are

emergencies, requiring the use of lights and sirens, which usually involve picking up patients at their residences. On average, he and his partner perform from three to seven jobs per day. In the past, Rosado was partnered with a paramedic on an ALS ambulance, and they performed from zero to nine jobs per day.

Advanced Life Support (“ALS”)

The record reflects that 15% of the ambulances at Bank Street are ALS ambulances. ALS is the level of care that allows ambulance services to treat patients suffering from heart attacks, strokes, bleeding, and other life-threatening emergencies, and to provide needed medical services to patients being transferred from local community hospitals to more specialized tertiary care facilities. The customers for ALS services are usually hospitals. The equipment in an ALS ambulance includes oxygen, ventilators, portable EKG monitors, and blood pressure machines.

All ALS calls are assigned to paramedics certified by the New York State Department of Health, who have a higher level of medical training than EMT’s. An ALS ambulance crew generally consists of a paramedic and an EMT, who drives the ambulance and assists the paramedics with carrying stretchers and providing medical care. The paramedics are certified to administer medications, including controlled substances, and to perform techniques such as IV insertion, defibrillation, cardioversion (providing an electrical stimulus to the heart), and intubation (putting a breathing vent into the patient’s trachea).

The paramedics use the same equipment as the EMT’s, as well as five additional pieces of equipment: an IV pump, a portable EKG monitor, a pediatric trauma bag, a ventilator or vent machine, and a blue bag known as the narcotics bag or drug bag.

Treatment Protocols

The Employer's EMT's and paramedics are required to follow various BLS and ALS treatment protocols for responding to medical emergencies, issued by the Regional Emergency Medical Services Council of New York City ("REMSCO"), the New York State Department of Health EMS Bureau and its local regional councils. O'Connor testified that both the Quality Assurance Department and the EMS supervisors^[14] ensure that the ambulance personnel are complying with these protocols.

Patient Care Standards

The Employer's Policy and Procedures Manual sets forth patient care standards of conduct for all ambulance employees. They provide instructions for providing emergency medical treatment, taking vital signs, taking a medical history, noting all possibilities of illnesses or injuries, transporting a patient, providing a patient report to the hospital staff, and filling out an Ambulance Call Report ("ACR").

Ambulance Core Reports

Cardone testified that an Ambulance Core Report ("ACR") is a "medical/legal record" of an ambulance crew's interaction with a patient. The forms vary in accordance with whether ALS or BLS services were provided, and whether these services were performed by the Ambulance Transportation or 911/EMS divisions. At the end of his tour, Rosado gives his ACR's to Operations. Copies of the ACR's are given to the patient, or to the receiving facility, hospital or nursing home.

Ambulance Transportation Crews – Daily Routine

When Ambulance Transportation crews clock in, they report to a turnout coordinator or supervisor, from whom they obtain their vehicle assignments and keys,

their radios, and other portable equipment and supplies. They then check the condition of their vehicles and the equipment inside. They are given “800” forms, which are check lists of equipment in an ambulance, to fill out before and after their shifts.

After the ambulance crews get into their vehicles, they log onto the dispatch system to notify the Dispatch Center that they are available. The dispatchers then start assigning calls to them. Whenever a call is completed, the ambulance crew notifies the dispatcher and is given its next assignment.

According to Pitonza, the turnout coordinators try to assign the ambulance crews their first call of the day, so that they can go directly to their first call instead of awaiting an assignment from the Dispatch Center.

The ambulance crews contact Dispatch if they need driving directions, additional equipment or manpower, or if they experience a breakdown on the road. The ambulance crews also have to maintain contact with hospital personnel, such as emergency department nurses and physicians, who provide guidance regarding treatment rendered at the patient’s residence and on the way to the hospital.

At the end of their shifts, the ambulance crews park their vehicles in the garage, turn in their paperwork and their portable supplies and equipment. They complete an end-of-shift “800” checklist, restock their vehicles with supplies, and check their oxygen tanks.

Location of Ambulance Calls

Rosado testified that at the Bank Street facility, there are several ambulances that are designated for picking up patients in a particular New York City borough, including two ambulances specifically designated for Brooklyn, one for Manhattan, and one for Far

Rockaway, Queens. The remaining ambulances could be sent anywhere in New York City. A Bank Street crew assigned to a Manhattan ambulance would contact Manhattan Dispatch. Rosado has completed ambulance pick-ups and drop-offs in Brooklyn, Queens and Staten Island. On four occasions, he was asked to transport a patient out-of-state.

SPECIAL OPERATIONS

Special Operations provides ambulances at large gatherings and sporting events. For example, the Employer has a contract with Yankee Stadium to provide ambulance services through Special Operations.

Special Operations events are usually staffed by ambulance crews, with the majority being BLS ambulances. Ambulettes provide about 1% of the coverage, and Paratransit vehicles are not used for such events. Yankee Stadium events are typically staffed by 15 to 30 EMT's.

Pitonza testified that a "handful of people" are permanently assigned to Special Operations, and "a couple" of ambulances are designated for Special Operations only. Typically, coverage for a particular special event would be supplemented by EMT's from the Ambulance Transportation Division who normally report to the turnout locations in Brooklyn, Manhattan or Mount Vernon.

911/EMS DIVISION

O'Connor testified that the 911/EMS Division is staffed by paramedics and certified EMT's, also referred to as advanced EMT's. He did not specify how many employees are employed by this division, or to what extent their credentials differ from those of the Ambulance Transportation Division EMT's and paramedics.

The 911/EMS Division carries out contracts with hospitals to provide Emergency Medical Services (“EMS”) or 911 ambulances, to respond to 911 emergencies. The EMT’s and paramedics employed by this Division administer patient care, transport the patients to hospitals, and maintain communication with hospitals and the Employer’s Dispatch Center. According to O’Connor, the paramedics in the 911/EMS Division “defibrillate, they intubate the person’s trachea, start IV’s, give medications, cardiovert, read EKG’s, and transmit information to hospitals.” Thus, the tasks they perform are similar to those performed by the paramedics in the Ambulance Transportation Division. The EMS/911 Division operates both ALS and BLS ambulances.

The 911/EMS Division encompasses New York City EMS and Westchester EMS.

O’Connor testified that New York City EMS ambulances are dispatched by both the Fire Department of New York City (“FDNY”), and by the Employer’s Dispatch Center, to respond to 911 emergencies within New York City.

Westchester EMS provides 911/EMS services for White Plains, New Rochelle, and Mount Pleasant, operating in conjunction with local police and fire departments. O’Connor testified that Westchester EMS ambulances are dispatched by the City of White Plains.

The ambulances assigned to the Employer’s 911/EMS Division are physically located at the hospitals serviced by the Employer. Employees of the 911/EMS Division report to work at these various hospitals. According to O’Connor, each of these hospitals has a room where the Employer keeps supplies and paperwork, and where the 911/EMS personnel report to work and dial into the Employer’s payroll system. Before

beginning their shifts, the 911/EMS personnel use an ambulance checkout sheet to document all equipment on their ambulances, and log onto the dispatch system to notify the Dispatch Center that they are ready to accept their first call. The 911/EMS ambulance crews use Nextels and two-way radios to keep the dispatchers informed of their progress on their assignments, and to request assistance in a variety of situations. For example, they contact the dispatchers if they need to speak with a physician about a patient's condition, or if a BLS crew needs back-up from an ALS crew. In addition, they contact the dispatchers if they have to request assistance from the police.

SHARED SERVICES

CALL CENTER

The Call Center takes all orders from customers for the Employer's Ambulance Transportation and Unimet divisions. It handles telephone calls from private homes, nursing homes, and hospitals, located in Brooklyn, Bronx, Manhattan, Queens, Nassau, Suffolk and Westchester. The Call Center is located in the Foster Avenue facility. In addition, several call-takers are based at hospitals throughout New York City, Westchester County and Long Island. The approximate number of call-takers was not disclosed.

O'Connor stated that when a patient telephones the Call Center at Foster Avenue, the call-taker enters the call into the computer system, and the information is automatically transferred to the Employer's Dispatch Center.

DISPATCH CENTER

As indicated above, it appears from the record that the Employer's Dispatch Center is located at the Bank Street and Amityville facilities. Various witnesses provided testimony solely with regard to the Bank Street dispatchers.

Each dispatcher is assigned to a particular division. At Bank Street, the Ambulance Transportation dispatchers and Unimet dispatchers work on opposite sides of the same room, and the Paratransit dispatchers work in the Paratransit trailer, separately from the other dispatchers. The record reflects that there are about 10 or 11 Paratransit dispatchers, three or four Unimet dispatchers, and 12 to 15 Ambulance Transportation dispatchers, who are further subdivided into BLS dispatchers and ALS dispatchers. The record does not reveal which (if any) dispatchers handle the 911/EMS Division, but O'Connor testified that New York City 911/EMS ambulances are dispatched by both the FDNY and the Employer's Dispatch Center, whereas the Westchester 911/EMS ambulances are dispatched by the City of White Plains.

The Dispatch Center uses Nextel telephones and a radio communication system to maintain contact with the Employer's Paratransit, Unimet and Ambulance Transportation vehicles. In addition, the dispatchers use computers with specialized dispatching software, AS-400 Dispatch and Telenav.

With regard to the Ambulance Transportation and Unimet divisions, the Dispatch Center at Bank Street dispatches calls to locations in New York City, Westchester, Nassau and Suffolk counties, and the Hudson Valley.^{[\[15\]](#)} According to O'Connor, the Dispatch Center receives the information on a call from a call receiver, and then decides on the level of service that needs to be dispatched to that particular patient or facility. The appropriate level of service could involve a one- or two-person ambulette, a BLS

transport ambulance, an ALS transport ambulance, or a specialty care transport ambulance for high-risk patients. The record does not specifically reveal which Dispatch Center personnel are empowered to make such decisions, or how specialty care transport ambulances for high-risk patients differ from ALS ambulances.

Ambulance Transportation Dispatchers

After an ambulance crew logs onto the dispatch system, the Dispatch Center sees what calls are pending. Based on the requested pick-up time and the patient's medical condition, the closest, most appropriate ambulance is dispatched to each call. The dispatchers convey information to the EMT's and paramedics regarding the medical reason that a patient is being transported, as well as any updated call information. The EMT's and paramedics contact the dispatchers regarding traffic and other problems on the road, estimated times of arrival, and problems with patients who are not ready when they arrive.

Unimet Dispatchers

O'Connor testified that the Unimet drivers receive their assignments both from a "turnout person," and from the Dispatch Center. Ward testified that he contacted the Dispatch Center on his two-way radio when there was an accident, a mechanical problem, or a patient who did not respond at the door. The record reflects that the ambulette drivers are in communication with their dispatchers throughout the day.

Paratransit Dispatchers

The Paratransit dispatchers maintain the Paratransit drivers' schedules, respond to radio calls, direct the Paratransit drivers on their routes, and prepare a log of daily events. They inform the Paratransit drivers of any changes to their manifests, such as

when a customer cancels, or when additional passengers are being inserted on their routes. The manifests for the various routes originate with the MTA.

TURNOUT COORDINATORS

Pitonza testified that there are about eight turnout coordinators. They “turn out” the Employer’s road staff, which includes Ambulance Transportation Division EMT’s and paramedics, as well as Unimet drivers. According to Pitonza, the turnout coordinators spend most of their time doing Ambulance Transportation Division work. [\[16\]](#)

The parties stipulated that turnout coordinators Louis Gonzalez, Lillian Sovulj and Leisa Gatson, who work in the turnout area of the Bank Street facility, are not statutory supervisors. In addition, an unspecified number of turnout coordinators report to the Amityville facility. The record does not reveal whether there are any turnout coordinators at the Manhattan turnout facility. According to Pitonza, there are currently no turnout coordinators in Mount Vernon. Rather, the turnout function in Mount Vernon is being “cross-covered” by employees whose job titles he did not specify.

Turnout Coordinators’ Tasks – Beginning of Shift

Pitonza testified that the turnout coordinators stage the vehicles assigned to the road staff, before the road staff begin their shifts. This entails pulling the vehicles into the driveway in front of the building, to make it easier for the road staff to check their vehicles, get them ready, and leave the facility. At the beginning of the road staff’s shifts, the turnout coordinators “meet and greet” them, help them find their vehicles, and give them their keys, paperwork, maps, Nextels and other equipment. When there is missing equipment, the road crews obtain new or replacement equipment from the turnout coordinators. When the road crews are ready to depart, the turnout coordinators

log them onto the Dispatch Center's computer system, so that they can get their assignments.

Pitonza stated that on the ambulance side, the turnout coordinators try to line up the crew's first call before they leave the garage, so that they can go directly to a predetermined location to pick up a patient. On the ambulette side, the drivers are given a trip sheet, with a list of prescheduled trips.

Turnout Coordinators' Tasks – End of Shift

At the end of the road staff's shifts, the turnout coordinators collect their keys, Nextels and other equipment, and their filled-out paperwork, including ambulance call reports (from the ambulance crews), trip logs (from the ambulette drivers), and checkout sheets (from both). The turnout coordinators check this paperwork for omissions, and anything that might be unclear. When there are calls that have not been entered into the computer system, the turnout coordinators work with the crew to make sure that the information is entered properly.

Pitonza estimated that the turnout and turn-in processes, at the beginning and end of the road crews' shifts, take about 20 minutes each.

Turnout Coordinators' Other Tasks

Pitonza testified that when ambulance crews need assistance or information, they contact either the dispatchers or the turnout coordinators. In addition, the turnout coordinators act as a conduit between the Dispatch Center and the ambulance crews. Pitonza estimated that the turnout coordinators and the ambulance crews have 30 to 40 conversations per shift.

According to Pitonza, the turnout coordinators' jobs also include organizing paperwork, updating schedules, and reimbursing employees from the petty cash box. In addition, they answer telephone calls from employees calling in sick, and from customers checking on the estimated time of arrival or confirming the level of service to be provided.

FIELD TRAINING OFFICERS

Rosado testified that the Field Training Officers ("FTO's") are EMT's, but that they are more highly paid than other EMT's. During his initial training, a field training officer ("FTO") provided him with one week of on-the-road training, which included basic general knowledge of patient care, map reading, and the use of the radio.

In addition, the record reflects that there are Paramedic FTO's, who train paramedics in the use of specialized medical equipment.

There is no further evidence of contacts or interchange between the FTO's and other employees. The parties did not take positions on whether they should be included in the bargaining unit.

FLEET MAINTENANCE / MECHANICS

There are three vehicle maintenance sites, at the Amityville, Mount Vernon, and Foster Avenue facilities. These three sites, combined, employ about 20 mechanics, who maintain the vehicles from all divisions of the Employer under the direction of the Director of Fleet Maintenance. The mechanics perform mechanical and auto-body repairs, collision dent work, repainting and preventative maintenance. In addition, they perform interior work on the cabinetry, structure lockdowns, seating and safety restraints.

When one of the Employer's vehicles breaks down on the road, a mechanic goes to the scene to trouble-shoot the problem. If possible, the mechanic either drives the vehicle back to a vehicle maintenance site for repairs, or repairs the vehicle on the road. Otherwise, a tow truck is called. When an ambulance breaks down, a replacement vehicle is brought to the ambulance crew either by the mechanics, or by a supervisor.

The mechanics also transport vehicles among the Employer's garages. Occasionally, they perform building maintenance work.

VEHICLE TRANSPORTERS

Sawyer testified that Kim Thomas, a vehicle transporter, reports to the Bank Street facility. Her job involves driving ambulances and jeeps among the different locations of the Employer, in order to get the vehicles serviced. The record does not disclose how many vehicle transporters are employed by the Employer, or whether they are part of Fleet Maintenance.

On February 16, 2007, a Manhattan EMT worked as Thomas's partner for one day. Apart from this one occurrence, there is no further evidence of contacts or interchange between the vehicle transporters and other employees.

DEGREE OF CENTRALIZED CONTROL OVER LABOR RELATIONS AND PERSONNEL POLICIES

HUMAN RESOURCES DEPARTMENT

O'Connor testified that the Employer's Human Resources Department ("HR") has offices in both the Foster Avenue and Bank Street facilities. HR sets the disciplinary policies for the company as a whole, and disciplinary records are stored in an HR database. An employee cannot be terminated or suspended without authorization from HR.

In addition, the HR Department posts job openings in all locations of the Employer. Although applicants for positions with the Employer are interviewed locally, by supervisors at the facilities where there are openings, the HR department screens applicants for the required credentials, performs background checks, and administers immigration law requirements.

O'Connor testified that wage rates for new hires are determined by the Employer's senior management, in conjunction with HR. Pitonza testified that salary ranges are determined by the Finance Department.

The Employer's policies and procedures manual, code of conduct and employee handbook apply to all employees.

PAYROLL

The Employer has a centralized payroll system. When employees punch in at their various locations, their hours are recorded in a central HR network, and their paychecks are generated through an outside payroll service.

RISK MANAGEMENT DEPARTMENT

The Employer's Risk Management Department provides training programs for all employees, on safety issues pertaining to lifting patients, operating motor vehicles, securing wheelchairs, and the like. When there is an incident or accident, such as a traffic accident, the employee notifies Dispatch, and Dispatch notifies a supervisor, who goes out to the scene of the accident and provides a report to the Director of Risk Management, Peter Merino, for follow-up.

ADVANCED LIFE SUPPORT COORDINATOR

O'Connor testified that the advanced life support ("ALS") coordinator, Andrew Posner, is responsible for ALS services throughout the company. He operates out of the Bank Street facility. His responsibilities include coordinating and maintaining the equipment used by the ALS units, overseeing the credentialing of paramedics, and complying with legal requirements regarding the dispensing of controlled substances. In addition, he works with the Vice President of Quality Assurance in developing protocols for paramedics.

QUALITY ASSURANCE DEPARTMENT

The Quality Assurance Department is responsible for the Employer's policies and procedures regarding patient care, and its compliance with statutes and regulations governing patient care. It ensures that the company is properly licensed, and reviews the paperwork submitted to third-party payers such as Medicare. Further, the Quality Assurance Department investigates and resolves complaints from outside parties such as hospitals, patients and their families, or the MTA.

In addition, Cardone stated that the Quality Assurance Department oversees training and education, other than the driver training for Paratransit drivers, which is overseen by Risk Management.

Reporting to Cardone, the Vice President for Quality Assurance and Compliance, are four Regional Managers. They include Art Dimello, who is responsible for Brooklyn and Long Island, Willie Burger, who oversees Mount Vernon, Toby Howton, who is responsible for the 911/EMS Division, and Don Thoma, for "points outside of New York." Cardone testified that Art Dimello reviews ambulance trips for compliance, and remediates crew members as needed.

Although Cardone stated that the Regional Managers provide quality and compliance oversight for all of the Employer's various divisions and departments, he also stated that none of the Regional Managers provides oversight for the Paratransit or Unimet drivers. He did not explain this apparent contradiction.

MANAGEMENT STRUCTURE AND SUPERVISION

Pitonza, the Director of New York City Operations, oversees the day-to-day operations of the Employer's New York Ambulance Operations, encompassing the Ambulance Transportation and 911/EMS divisions,^{[\[17\]](#)} and New York Non-Ambulance Operations, encompassing the Unimet and Paratransit divisions. Pitonza testified that he has oversight responsibilities over New York City, Long Island, and Westchester. He works at the Bank Street facility and reports to O'Connor. Also reporting to O'Connor are the manager of the Dispatch Center and the Director of Risk Management.

Among the managers reporting to O'Connor and Pitonza is Steven Feinberg, the Director of Non-Ambulance Transportation, which encompasses the Paratransit and Unimet divisions. Reporting to Feinberg is Chris Schukin, who is in charge of the Paratransit Division, and Shaiema Castillo, who is in charge of the Unimet Division and deals with Unimet drivers on a day-to-day basis.

"Parallel" to Castillo is Robert Eley, who has supervisory duties with respect to the Unimet drivers, Ambulance Transportation employees and turnout coordinators.

Schukin oversees the Paratransit supervisors, who include Lindel Simms and other on-site supervisors. In addition, Schukin oversees the road supervisors, who are also referred to as field supervisors. Simms also reports to Feinberg.

On the New York Ambulance Operations side, the supervisors for the Ambulance Transportation and 911/EMS divisions report to Pitonza. Jude Sannon, Operations Manager, is the scheduling manager for the Ambulance Transportation Division. The supervisors for the 911/EMS Division include Shannon Grieves. In addition, there are field supervisors for both of these divisions.

PARATRANSIT SUPERVISORS

There are seven or eight Paratransit supervisors, including several supervisors who work at the Bank Street facility, such as Schukin and Simms. There are also a number of field supervisors, also referred to as road supervisors.

Simms oversees the Paratransit dispatchers on a day-to-day basis, and Bonaventure testified that he considers Simms to be his direct supervisor. Simms develops the work schedules for the Paratransit drivers, and Bonaventure speaks with Simms about any scheduling problems and requests for time off. Any incidents or accidents must be reported to Simms, or to Dispatch.

The Paratransit supervisors include Raoul Palaccios, who coordinates 19A compliance for both Paratransit and Unimet.

The Paratransit field supervisors or road supervisors observe Paratransit drivers to assess how they are driving and make sure that they are doing their job correctly. The Paratransit field supervisors check whether there have been any problems or infractions, and assist drivers in the event of an accident or incident. Pitonza testified that the Paratransit field supervisors include Sherry Hillard, Herbert Mejias, O'Neil Taylor, Michael Romeo, and Francesco. [\[18\]](#)

UNIMET SUPERVISORS

According to O'Connor, there are "probably four" supervisors in the Unimet division, including road supervisors or field supervisors and supervisors who remain on-site to take care of scheduling, organize the payroll, and perform other administrative functions.^[19] He stated that there are some field supervisors who oversee both Unimet and Ambulance Transport employees.

Ward testified that he was hired by Pedro,^[20] a director of Unimet, and that his direct supervisors were Robert Eley and Shamina Castillo. They approved his vacation forms, and he notified them, as well as Dispatch, on the two occasions that he had accidents. In addition, Castillo gave Ward a disciplinary warning.^[21] Overtime work in the Unimet Division is assigned by Castillo, Feinberg, or Pitonza.

According to Ward, the road supervisors, or field supervisors, checked to make sure he was doing his job correctly, and were available to help with any problems on the road.

Ward stated that at the end of his shift, when he turned in his vehicle and paperwork, he reported to whoever was in the "Operations box" at the time. This could be Suzette Ferrell, an Ambulance Transport supervisor, or it could also be Robert Eley, Ward's direct supervisor. When Ward called in sick, he spoke to any supervisor who picked up the telephone, including Suzette Ferrell.

Ward testified that he has seen other Transcare supervisors at the hospitals to which he was assigned to as a Unimet driver. Although these supervisors were available to help if necessary, Ward did not have occasion to speak to them.

AMBULANCE TRANSPORTATION DIVISION

Rosado testified that at the Bank Street location, there are 10 to 12 Ambulance Transportation Division supervisors. He is supervised by Operations supervisors^[22] and road supervisors, also referred to as field supervisors. The record does not reveal how many Operations supervisors there are at the Employer's other locations, but Sawyer testified that the total number of field supervisors is 12 to 15.

Rosado stated that Rob Eley is the supervisor with whom he deals the most on a day-to-day basis. At the highest level, Rosado reports to Jeff Pitonza, Operations Director, and Jude Sannon, Operations Manager, who is the scheduling manager for the Ambulance Transportation Division.

The other supervisors to whom Rosado reports include Suzette Farrell, Luis Gonzalez, Tiffany McBride, Herbie Mejias,^[23] Maryanne Sawyer, Beth Perlowitz, and Marv Jackson. According to Rosado, all of these individuals have the authority to place employees on restriction, which is the equivalent of a suspension,^[24] and to issue verbal warnings to EMT's and paramedics, for poor patient care, lateness, or failure to secure the oxygen tank when they are not in their ambulances.

Pitonza asserted that several of Rosado's supervisors have additional supervisory responsibilities, in other divisions and locations. For example, Eley oversees Unimet turnout in the mornings, as well as helping with the Ambulance Transportation turnout process. Jackson is the 911/EMS overnight supervisor and is responsible for all EMS units, as well as Ambulance Transportation units when necessary. Pitonza stated that Sannon handles "scheduling for Manhattan, as well as the scheduling for Unimet." Perlowitz "will cross cover for the 911 [and] Transportation units, oversee Unimet, respond to any incidents or accidents for any vehicle," according to Pitonza. Mejias, a

road supervisor, will “oversee any of the units” when “he’s needed for incidents, accidents, if it’s busy in a certain area.” Pitonza testified that Farrell works in turnout at the Bank Street facility, and collects paperwork, keys and equipment both from Ambulance Transportation and Unimet drivers at the end of their tours. Similarly, Gonzalez is in turnout, “so he would be cross covering with the ambulettes and the ambulances for issuing of keys, collecting paperwork, Nextels, etc.” Finally, Pitonza stated that McBride is on an overnight tour, and could be covering the turn-in process for both the ambulette drivers and ambulance drivers, as well as covering “the watch desk responsibilities for 911.” These responsibilities apparently include taking telephone calls from employees calling in sick at night.

The parties stipulated that Eley, Farrell and McBride are statutory supervisors.

Supervision of Turnout Coordinators

The record reflects that Eley, Farrell and McBride supervise turnout coordinators Louis Gonzalez, Lillian Sovulj and Leisa Gatson, in addition to their other supervisory duties.

Field Supervisors

According to Sawyer, there are 12 to 15 field supervisors in New York Ambulance Operations. They have oversight responsibilities with respect to the Ambulance Transportation Division, the 911/EMS Division, and to some degree, the Unimet Division, but not with respect to the Paratransit Division. There are three field supervisors who primarily cover Manhattan, one or two field supervisors who primarily cover Brooklyn, and another one or two field supervisors who mainly work in Queens. There are four or five field supervisors who primarily cover the Bronx, which has the

most hospitals, and two field supervisors who are mainly assigned to Westchester.

Sawyer did not know how many field supervisors are assigned to Long Island. She stated that the field supervisors visit Staten Island only if there is a need.

Sawyer testified that she is both a field supervisor and an Operations supervisor,^[25] with oversight responsibilities over employees in both the Ambulance Transportation and 911/EMS divisions. In addition, Sawyer maintained that she “supports” the Unimet Division, and provided one example in which she “assisted” in unlocking an ambulette with the keys locked inside.

Sawyer primarily works in Manhattan, but travels to other boroughs of New York City when needed. For example, she stated that she “might” travel to another borough to bring needed supplies to an ambulance crew, or to help the crew deal with an unruly patient. In addition, she might travel to another borough to provide support in an emergency, such as a motor vehicle accident. This would involve bringing a back-up vehicle, helping the crew to deal with passersby and customers, filling out paperwork and initiating the investigation process. However, the Employer normally sends its closest supervisor to the scene in the event of an accident, according to O’Connor.

Field Supervisors’ Duties with Respect to the Ambulance Transportation Division

The field supervisors assist with turning out the ambulance crews, and ensuring that they have all the supplies they need. They spend the rest of the day on the road, checking up on the crews and assisting them if they are lost, or need a lift assist, or if they are having trouble with their vehicles.

Sawyer helps with the turnout process at the Manhattan facility, and oversees Manhattan ambulance calls, including those covered by Brooklyn ambulance crews. She

assigns ambulance crews to jobs, and finds personnel to fill in if an employee's partner is absent. This often entails forming working units by combining partners from different locations, and in some instances from different divisions.

Rosado has occasional interactions with field supervisors who are not based in Brooklyn, such as Sawyer, who once gave him a verbal warning.

Field Supervisors' Duties with Respect to 911/EMS Division

Sawyer testified that she and the other field supervisors serve as site supervisors for each hospital in the 911 system. This responsibility includes making sure that the facility is well-stocked, and that the ambulances are fully equipped.

911/EMS DIVISION

Contrary to Sawyer, Pitonza testified that the 911/EMS Division has its own, separate set of field supervisors. According to Pitonza, each EMS field supervisor is assigned to a particular hospital, and a particular shift.

Shannon Grieves, who was specifically identified as being a 911/EMS Division supervisor or manager, was not mentioned in connection with any of the other divisions.

Pitonza stated that the 911/EMS field supervisors have certain oversight responsibilities with respect to the Ambulance Transportation Division employees. When an Ambulance Transportation Division ambulance discharges or picks up a patient at a hospital to which a 911/EMS Division field supervisor is assigned, the 911/EMS field supervisor spot checks the ambulance, helps with its "coordination," and responds to any incident or accident involving that ambulance.

The 911/EMS field supervisors have a similar role with respect to any Unimet vehicle that comes to the hospital.

DISPATCH SUPERVISORS

Pitonza testified that Simms supervises the dispatchers in the Paratransit Division, and that he (Pitonza) supervises the Unimet and Ambulance Transportation dispatchers.

At the next level of supervision below Pitonza, Rosado testified that the Ambulance Transportation dispatchers are separately supervised by David Koneig,^[26] Gary Bisque, and Kathleen, whose last name he did not know.

FLEET MAINTENANCE SUPERVISORS

The mechanics are under the direction of the Director of Fleet Maintenance. In addition, Pitonza stated that Fleet Maintenance has two managers, Doug Calder and Chris Palermo, who report to O'Connor and Pitonza.

The back-up manager for the Mount Vernon Fleet Maintenance Department is Jay Robins or Rollins, who spends close to half of his day coordinating vehicle movement for the purpose of repair. Robins or Rollins is also an Operations supervisor at the Mount Vernon location.

OTHER JOB CLASSIFICATIONS

The record does not reflect who supervises the Special Operations employees, call-takers, vehicle transporters or Field Training Officers.

COMPANY-WIDE MANAGEMENT CONFERENCE CALLS AND MEETINGS

O'Connor testified that the Employer's managers have a daily conference call that includes all divisions and locations of the company. Topics include the previous day's call volume and on-time performance, unit hours, payroll hours, accidents and incidents, and staffing needs. The same managers discuss similar issues at a weekly "KPI" (or "key performance indicators") meeting or conference call. Also participating in the KPI

meeting are a systems analyst and managers from HR, Quality Assurance, Accounting, and Call Receiving, as well as either O'Connor or the Chief Financial Officer.

EMPLOYEE TRANSFERS, INTERCHANGE AND CONTACTS

PARATRANSIT DIVISION

The record reflects that since October, 2006, when the Employer's Paratransit Division first came into existence, a substantial percentage of Unimet drivers have permanently transferred to the Paratransit Division. There is no other evidence of temporary or permanent interchange between Paratransit drivers and employees in the other job classifications at issue in this case. Although Paratransit drivers occasionally use Unimet vehicles to perform Paratransit work, they do not perform any Unimet work or fill in for Unimet drivers.

UNIMET DIVISION

Permanent Interchange

As described above, a substantial percentage of Unimet drivers have transferred to the Paratransit Division.

Temporary Interchange

Although Sawyer hypothesized that a Unimet driver, who is certified as an EMT or paramedic, could fill in on an ambulance, the record fails to establish that this has ever occurred, or that an Ambulance Transportation Division employee has ever filled in on a Unimet vehicle.

At most, the record reflects that the Unimet and Ambulance Transportation employees assist one another in their work at times. For example, if an ambulette patient has a medical emergency, an ambulance is dispatched. Occasionally, when there is

insufficient time for a Unimet driver to get to a call, an ambulance crew that is in closer proximity may be assigned to pick up a Unimet patient. EMT Rosado testified that he and his partner have received two such assignments within the past year. Also, because there are very few ambulettes originating in Manhattan, an ambulance originating in Manhattan is occasionally assigned to perform a Unimet call there.

Unimet and Ambulance Transport employees occasionally assist one another in moving patients who are very heavy or critically ill. For example, EMT Rosado testified that in one instance, he and his partner provided assistance to an ambulette driver, who needed help carrying a patient up two flights of stairs. Rosado and his partner were dispatched for this back-up call because they happened to be in the same geographical area. Similarly, Ward, an ambulette driver, testified that ambulance drivers sometimes helped him carry patients up and down stairs, and that they sometimes gave him a hand while he was bringing a wheelchair down a ramp at a hospital.

Temporary Interchange Among Unimet Employees at Different Facilities

There is no evidence of temporary or permanent interchange among ambulette drivers turning out from the Bank Street, Amityville, Mount Vernon and Manhattan facilities. Because there are very few ambulettes turning out of Manhattan, ambulettes originating in Brooklyn often perform calls in Manhattan, but they rarely go to Nassau, Suffolk, or Westchester counties.

AMBULANCE TRANSPORTATION DIVISION

Temporary Interchange Among Facilities

The record contains a 15-page spreadsheet introduced into evidence by the Employer, showing the days employees worked in departments other than their normal

departments, for the period from January 1, 2007, through July 25, 2007. It demonstrates extensive interchange, among EMT's turning out of the Brooklyn, Manhattan and Westchester locations, as well as among paramedics turning out of those locations. Every day, there are several instances of this type of interchange. For example, on January 3, 2007, there were three Manhattan EMT's working as Brooklyn EMT's, one Brooklyn paramedic working as a Manhattan paramedic, three Brooklyn paramedics working as Manhattan EMT's, one Manhattan EMT working as a Brooklyn paramedic, one Mount Vernon EMT working in Brooklyn Dispatch, and one Mount Vernon EMT working as a Brooklyn-based EMT.

Similarly, on January 4, 2007, there were two Brooklyn EMT's working as Manhattan EMT's, two Brooklyn paramedics working as Manhattan EMT's, one Manhattan EMT working as a Brooklyn EMT, one Mount Vernon EMT working as a Manhattan EMT, and one Mount Vernon EMT working in Central Brooklyn Dispatch. Similar patterns of interchange emerge on a daily basis.^{[\[27\]](#)}

As summarized previously, Sawyer stated that two to three times a week, she has to form working units by combining partners from different locations or divisions. Referring to various records of the Employer, she provided detailed testimony regarding specific instances in which she formed two-person ambulance crews made up of employees who are normally assigned to different locations of the Employer. For example, there were several instances in which a Manhattan employee whose usual partner was out sick was sent to Brooklyn to meet up with a different partner there. In another example, Sawyer sent an ambulance driver based in Manhattan to Mount Vernon, to form a crew with an employee in Mount Vernon who did not have a partner that day.

In another instance, a Brooklyn employee drove an ambulance to Manhattan to form a crew with a Manhattan employee.

Rosado testified that he has worked on several of the ambulances with hospital logos.^[28] For example, he has worked on the SU1 or Saint Vincent's 1 ambulance, which is based in Manhattan and occasionally goes to an affiliated hospital in Queens. In addition, Rosado has worked on the PG1 or Peninsula 1 ambulance, based in Queens, and the LU1 or Lutheran 1 ambulance, which turns out from the Bank Street garage. He stated that the work on a hospital logo ambulance is no different from his usual work, except that it involves being based out within the area of the hospital.

Rosado further testified that in the past, when his Thursday partner was Charles Arresmendi, a paramedic, Rosado reported to the Bank Street facility some days, and to the Manhattan facility some days.

According to O'Connor, an ambulance that begins its day in Mount Vernon could be in Brooklyn for part of the day, and an ambulance that turns out of Brooklyn or Long Island could be allocated elsewhere, depending on need. Sawyer estimated that ambulances turning out of Brooklyn have a 50-50 chance of being sent to Manhattan. The reason for this is that the call volume in Manhattan is higher than in Brooklyn, but there are more ambulances turning out of Brooklyn than Manhattan.

An exhibit furnished by the Employer reflects that the ambulances turning out of the Bank Street facility perform the vast majority of their calls in Brooklyn, Manhattan, and Queens, only occasionally traveling to Nassau, Suffolk or Westchester counties. Conversely, the ambulances turning out of the facilities in Amityville (Suffolk County) and Mount Vernon (Westchester County) rarely perform calls in Brooklyn.

Temporary Interchange Among Job Classifications Within Ambulance Transportation Division

EMT's, Paramedics and Dispatchers

Among EMT's turning out of the Brooklyn, Manhattan and Mount Vernon locations, the Employer's spreadsheet demonstrates extensive interchange with employees in other job categories within the Ambulance Transportation Division, particularly paramedics and dispatchers. For example, the first page of the document shows that Jason Cancel, who normally works as an EMT at the Employer's Mount Vernon location, worked as a dispatcher at the Brooklyn location for several days in January, 2007. Also in January, Abraham Merl, a Brooklyn-based paramedic, was asked to cover an EMT shift in Manhattan on several occasions.

Turnout Coordinators and EMT's

Pitonza testified that the EMT's often cover for turnout coordinators who are out sick. Conversely, during busy periods, the turnout coordinators serve as EMT's or ambulance drivers. Of the Employer's eight turnout coordinators, three or four are credentialed as EMT's. When the turnout coordinators are "on the road" performing ambulance calls, their own positions are covered by supervisors. The record does not disclose how often this occurs.

Temporary Interchange Between Ambulance Transportation and 911/EMS Divisions

The Employer's spreadsheet also shows that EMT's and paramedics in the Ambulance Transportation and 911/EMS divisions fill in for one another about once a week. In one example, Sawyer testified that she temporarily moved an Ambulance Transportation employee, who was qualified for 911 work, to a 911 ambulance.

Temporary Interchange Between Vehicle Transporters and EMT's

As previously discussed, the record reveals that on February 16, 2007, a Manhattan EMT was partnered with Kim Thomas, a vehicle transporter, for one day. Apart from this one occurrence, there is no further evidence of contacts or interchange between the vehicle transporters and the EMT's.

Permanent Interchange

An exhibit showing permanent transfers within the company during the period from January 1, 2007, until July 31, 2007, for employees in the Ambulance Transportation, Unimet and 911/EMS divisions, lists about 75 permanent transfers. About half of these transfers involved Bank Street employees sought by the Petitioner. For example, five of the transfers involved Brooklyn EMT's transferring into positions as Manhattan EMT's. Another five transfers involved Manhattan EMT's transferring into positions as Brooklyn EMT's. One transfer was by a Mount Vernon EMT who became a Brooklyn EMT. Three transfers were by Brooklyn EMT's transferring to Special Operations. Four transfers were by Brooklyn EMT's and paramedics who remained in Brooklyn, becoming Ambulance Transportation dispatchers. There were no transfers from Amityville to Brooklyn, or from Brooklyn to Amityville.

The Employer has several programs, or "Traks," designed for employees who want to qualify themselves for more responsible positions within the company. For example, the "TransCare Trak EMT to Paramedic Trak" provides the opportunity for EMTs to advance their education and training to the level of paramedic. The "TransCare Trak Transport Division to EMS Division" enables EMTs and paramedics employed in the Ambulance Transportation Division to transition to the 911/EMS Division. The

“TransCare Trak to EMT” explains how Unimet and Paratransit drivers can advance their education and training to the level of EMT. The record does not reveal how many employees have participated in these programs. However, O’Connor recalled the names of two employees who have taken advantage of the EMT to Paramedic Trak: Michael Dixon and Gary Biscotti.

Turnout Coordinators and EMT’s

Pitonza testified that three of the Employer’s eight turnout coordinators were transferred from EMT positions to turnout coordinator positions.

DISPATCH CENTER

Temporary Interchange

As previously indicated, the record reflects that within the Ambulance Transportation Division, the dispatchers, EMT’s and paramedics regularly fill in for one another. However, there is no evidence of temporary interchange among dispatchers in different divisions. O’Connor asserted that the Ambulance Transportation and Unimet dispatchers are “cross-trained” to fill in for one another, but he did not indicate whether this has ever occurred.

Permanent Interchange

An exhibit showing permanent transfers within the company during the period from January 1, 2007, until July 31, 2007, for employees in the Ambulance Transportation, Unimet and 911/EMS divisions, indicates that one Unimet dispatcher became an Ambulance Transportation dispatcher during this period. In addition, as described above, four Bank Street EMT’s and paramedics transferred into positions as Ambulance Transportation dispatchers also at the Bank Street location. Similarly, two

Amityville EMT's became Amityville dispatchers. There were no other permanent transfers involving dispatchers.

FLEET MAINTENANCE / MECHANICS

There is no evidence of temporary or permanent interchange between the mechanics and any other job classification at issue in this case.

Occasionally, drivers communicate with mechanics regarding problems with their vehicles. In addition, Pitonza asserted that the drivers assist the mechanics in repairing vehicles on the road, by performing helper-type functions, such as holding a flashlight, handing tools to the mechanic, or turning the key in the ambulance. However, Pitonza did not indicate how often this occurs.

QUALIFICATIONS

PARATRANSIT DRIVERS

The record reflects that the MTA requires Paratransit drivers to have their Commercial Driver License ("CDL") Class "C" licenses, and their 19A certifications from the New York State Department of Motor Vehicles ("DMV"). In addition, they must be certified by the Taxi and Limousine Commission.

The Paratransit drivers do not need to be certified by the New York State Department of Health ("DOH"), or any other health agency.

UNIMET DRIVERS

Like the Paratransit drivers, the Unimet drivers must have a CDL or Class "C" license, with a 19A certification, and must be certified by the Taxi and Limousine Commission. Ward testified that the renewal of his 19A certification involved being tested on his defensive driving skills.

According to Ward, the only difference between the qualifications for Paratransit drivers and Unimet drivers is that the maximum number of points on one's CDL license is lower for Paratransit drivers than for Unimet drivers. Like the Paratransit drivers, the Unimet drivers do not need medical training, or DOH certification.

EMT'S

The Employer's EMT's are certified to provide Basic Life Support services, including ventilating a patient, taking the patient's vital signs, airway management, bleeding control, delivering babies, and CPR. They are required to attend New York State accredited EMT schools, and to obtain EMT certifications issued by the New York State Department of Health ("DOH") and by the City of New York. There was conflicting testimony as to whether employees who drive ambulances are required to have CDL licenses.

To obtain his EMT certification, Rosado completed about 160 hours of medical training, about 32 hours of hospital emergency room experience, and 16 hours of experience working on a 911 ambulance. In addition, he had to pass a background check and an examination administered by New York State DOH. Every three years, his EMT certification has to be renewed, which requires him to take the examination again.

Rosado testified that after he filed an application at the Bank Street facility for his current position as an EMT, an "HR person" gave him an entrance examination, which tested his medical knowledge and included excerpts from the DOH exam for EMT's. After passing the exam administered by HR, which is given to all EMT's, he was told to attend the Employer's orientation training.

PARAMEDICS

The Employer's paramedics are certified by the New York State Department of Health ("DOH") to administer medications, cardiovert (i.e., provide an electrical stimulus to the heart), intubate (i.e., put a tube into the patient's trachea, to maintain oxygen levels in the blood), and perform a few surgical techniques. Before attending paramedic school, they must be certified EMT's. Cardone testified that the training program for paramedics entails at least 1,000 hours of training, which includes both clinical and classroom time. After attending the training, prospective paramedics must pass certifying exams administered by both New York State and the City of New York. The paramedics have to recertify every three years.

Rosado stated that the Employer's HR Department administers an entrance examination to applicants for paramedic positions, which is based on the protocols for paramedics. The Employer's entrance examinations for both EMT's and paramedics are written, multiple choice examinations.

911/EMS DIVISION

Pitonza testified that EMT's hired directly into the 911/EMS Division are required to have at least 6 months' experience. O'Connor stated that a person coming out of EMT or paramedic school would normally start in the Ambulance Transportation Division, gain experience there, and then apply to transfer to the 911/EMS Division. A certain amount of further training would also be required, the specifics of which were not described.

TURNOUT COORDINATORS

According to Pitonza, the turnout coordinators have to be able to drive a vehicle, and their driver's licenses and backgrounds must be "clean." In addition, the record reflects that at least three of the eight turnout coordinators have their EMT credentials.

DISPATCHERS

The record reflects that some of the dispatchers are EMT's or paramedics, and some have dispatching experience at other ambulette or ambulance companies. The minimum qualifications for dispatchers were not disclosed, and Pitonza testified that there are no licensing requirements for dispatchers.

MECHANICS, VEHICLE TRANSPORTERS, CALL-TAKERS AND FIELD TRAINING OFFICERS

The record does not reflect what the qualifications or requirements are for employment in the above job classifications.

TRAINING PROVIDED BY THE EMPLOYER

NEW EMPLOYEE ORIENTATION PROGRAM

O'Connor testified that the Employer provides an orientation program for new employees, which takes place at the Bank Street location and is attended by employees in all divisions. It is directed by Cardone, and by the Employer's Training and Education Department. The first day of the orientation program is uniform for all employees. The topics covered include the Employer's policies and procedures manual, code of conduct and employee handbook.

In addition, the new employee orientation program includes driver-training programs for Paratransit, Unimet/ambulette and ambulance drivers.

PARATRANSIT DIVISION

The Employer provides Paratransit drivers with a two-week training program, which incorporates a Paratransit training curriculum designed by the MTA. Apart from the orientation program on the first day of training, the Paratransit drivers are trained separately from the other employees. Their training is conducted by Schukin, Feinberg, Sims, Castillo, and other Paratransit supervisors. In addition, a number of safety-oriented training components are presented by Peter Merino, the Director of Risk and Safety.

Cardone stated that the driver training for Paratransit drivers is overseen by the Risk Management Division, including a practical observation and evaluation before they are sent out to drive by themselves, but that training and education for other divisions of the Employer is overseen by the Quality Assurance Department.

The Paratransit training covers proper uniforms, customer pick-up procedures, Nextel radio usage and etiquette, driving the Paratransit vehicles, operating wheelchair lifts, tying down wheelchairs, defensive driving, First Aid, CPR, and recognition of potential medical emergencies. It also covers MTA manifests, trip tickets and other paperwork requirements. In addition, there is an on-the-road component, in which new Paratransit drivers ride along with more experienced Paratransit drivers.

UNIMET

Bonaventure testified that when he worked for Unimet in 2005, his training consisted of going out on the road with a more experienced driver until his Taxi and Limousine Commission (“TLC”) license came through. However, Ward stated that when he was hired as a Unimet driver, in 2001, he received one half-day of classroom training, covering safety and neatness, and one half-day of hands-on training, which involved being shown the Unimet vehicles, wheelchairs and wheelchair tie-downs.

Cardone testified that Unimet training also includes paperwork, uniforms, and dealing with customers. He stated that the ambulance drivers do not need to know CPR, but he did not know whether they are required to know First Aid.

AMBULANCE TRANSPORTATION DIVISION

EMT's

Rosado testified that the Employer's training program for EMT's in the Ambulance Transportation Division consisted of one week of classroom orientation, and one week on the road with a field training officer ("FTO"). The classroom orientation was conducted by Yvette Brooks,^[29] Pitonza, Cardone, Moreno, Steve Miller from Risk Management, "a couple of road supervisors," and Art Dimello, who is in charge of ambulance core reports ("ACR's"). After the first day of training, the classes were attended by EMT's and paramedics only.

Rosado testified that Moreno, the Safety Director, showed films demonstrating scenarios that can occur when an ambulance is going at a high rate of speed. The training with the FTO included basic general knowledge of patient care, map reading, speaking on the radio, and driving in and out of cones on an emergency vehicle optical course ("EVOC").

With regard to patient care, Rosado testified that the EMT training covers almost everything a paramedic is trained to do.

Paramedics

The Employer provides the paramedics with training sessions on controlled substances and specialized equipment such as ventilators, defibrillators, and the IVAC

Medication Infusion Pump. The training includes hands-on training with a Paramedic Field Training Officer, under field conditions. The paramedics are required to obtain recurrent training on this equipment through Continuing Medical Education seminars.

DISPATCH CENTER

Pitonza testified that after the initial orientation session for all employees, the dispatchers are given hands-on training. According to Pitonza, the Paratransit dispatchers are trained by the senior Paratransit dispatchers, and the Unimet dispatchers are trained by the turnout staff. The Ambulance Transportation dispatchers are trained by the senior Ambulance Transportation dispatchers, and by the call-taking and turnout staff.

911/EMS DIVISION

An exhibit regarding the Employer's "TransCare Trak Transport Division to EMS Division" indicates that this program provides EMT's and Paramedics in the Ambulance Transportation Division with the opportunity to transfer to the 911/EMS Division, through "an extensive qualification and training process." The Employer did not provide any further description of this training process.

OTHER JOB CLASSIFICATIONS

The record does not disclose what training (if any) the Unimet helpers, Unimet on-site coordinators, turnout coordinators, mechanics, vehicle transporters, call-takers, and field training officers receive.

HOURS

PARATRANSIT DRIVERS

Keddo testified that he works on Sundays from 4:45 a.m. until 3:30 p.m., and on Mondays, Thursdays and Fridays from 5:15 a.m. to 4:30 p.m. He has a 30-minute break each day, which is specifically set forth on his manifest, whereas the other divisions do not have prescheduled breaks. Bonaventure works 10 to 11 hours per day, four days per week, but he did not indicate what days he works, or what time he begins work. Pitonza testified that the Paratransit Division operates until about 10:30 p.m., but he did not disclose the time when operations begin. It appears from the record that the Paratransit Division is operational seven days per week.

UNIMET DRIVERS

According to O'Connor, Unimet drivers typically work a 40-hour week, with some working 10 hours a day, four days a week, and some working eight hours a day, five days a week.

Ward testified that during his first six years with the Employer, he worked on the day shift, from 6:00 a.m. until 2:30 or 3:00 p.m., Monday through Friday. During his last two months, he worked on the overnight shift, from 10:00 p.m. until 6:00 a.m.

According to Ward, there were two Unimet drivers who reported to work at 5:00 a.m., four who started at 6:00 a.m., 15 or 20 Unimet drivers who started at various times between 7:00 a.m. and 9:00 a.m., and one driver who worked on the overnight shift.

Although there was no mention of an afternoon shift, it appears from the record that the Unimet Division is operational 24 hours a day. The record does not specifically disclose whether the Unimet Division is operational on the weekends.

AMBULANCE TRANSPORTATION DIVISION

The record reflects that the Ambulance Transportation Division provides services 24 hours per day. Employees in the Ambulance Transportation Division work 35 to 40 hours per week, 8, 10 or 12 hours per day, with occasional overtime work. Rosado testified that he works from Tuesday until Friday, from 9:00 a.m. until 5:00 p.m. The record does not disclose the starting times of other EMT's or paramedics. The record does not specifically disclose whether the Ambulance Transportation Division is operational on the weekends.

DISPATCHERS

The record reflects that the Employer's dispatchers work 35 to 40 hours per week. According to Pitonza, some dispatchers in the Ambulance Transportation Division work until 11:00 p.m., and one dispatcher works until midnight. No further details were provided regarding their work schedules, or the hours worked by the Paratransit or Unimet dispatchers.

TURNOUT COORDINATORS

Pitonza testified that the three turnout coordinators at the Bank Street location work from 7 a.m. to 3:00 p.m., from 3:00 p.m. to 11:00 p.m., and from 11:00 p.m. to 7:00 a.m. He did not indicate how many days per week they work.

OTHER JOB CLASSIFICATIONS

The hours worked by the Unimet helpers, Unimet on-site coordinators, call-takers, mechanics, vehicle transporters, Field Training Officers, Special Operations and 911/EMS Division Employees were not disclosed.

WAGES AND BONUSES^[30]

PARATRANSIT DRIVERS

On the last day of the hearing, the parties stipulated that the Paratransit drivers' hourly rates range from \$11.50 to \$17 per hour. The average rate of pay for Paratransit drivers is \$15 an hour, according to O'Connor.

Keddo testified that his starting rate as a Paratransit driver was \$11.50 per hour, and that he recently received a raise of \$.50 per hour. Bonaventure's starting wage as a Paratransit driver was \$12.50 per hour.

In addition, the Paratransit drivers are eligible for three types of bonuses: sign-on bonuses of either \$250 or \$500, referral bonuses, and incentive bonuses. In October, 2006, Keddo received a \$500 sign-on bonus that was offered to all new Paratransit drivers in the Employer's "help wanted" advertisement at that time. More recently, Bonaventure received a \$100 incentive bonus, for three months of timely and accident-free service. The parties stipulated that at least one Paratransit driver recently received a \$200 referral bonus.

UNIMET DRIVERS

On the last day of the hearing, the parties stipulated that the Unimet drivers' hourly wage rates range from \$10 to \$12.50, and that they do not receive a shift differential. Their average rate of pay is \$11 per hour, according to O'Connor. Pitonza testified that the top of the scale for ambulette drivers is \$13 per hour.

Ward testified that his starting pay in 2001 was \$9.50 per hour. However, he stated that after becoming an Elite driver, he earned \$110 per day, for a 10-hour day, and an additional \$6 for each pick-up and drop-off in excess of 19 calls per day.

The parties stipulated that at least one Unimet driver recently received a bonus of \$50, and several very long term employees recently received bonuses of \$175 in lieu of a raise.

EMT'S IN THE AMBULANCE TRANSPORTATION DIVISION

The parties stipulated that the range of wage rates for EMT's in the Ambulance Transportation Division is \$10 to \$23.11 per hour. However, their average rate of pay, according to O'Connor, is only \$12 an hour.

Rosado testified that he earns \$10 per hour, and has received no raises since he began working for the Employer.

Pitonza testified that the Ambulance Transportation Division staff in Brooklyn and Manhattan have an incentive program, whereby they receive a bonus of \$10 for each call above 20 calls in a 48-hour week.

EMT'S IN THE 911/EMS DIVISION

According to O'Connor, an EMT on a 911 unit earns an average of \$18 to \$19 per hour. Pitonza testified that initial pay rates for EMT's assigned to the 911/EMS Division are in the range of \$13 to \$20 per hour.

PARAMEDICS IN THE 911/EMS DIVISION

O'Connor estimated that a paramedic in the 911/EMS Division earns an average of about \$25 per hour, or perhaps \$23 or \$24 per hour.

DISPATCHERS

The parties stipulated that the dispatchers' hourly wages range from \$12 to \$17 per hour for Paratransit dispatchers, from \$16 to \$19.15 per hour for Unimet dispatchers, and from \$12 to \$23.03 per hour for Ambulance Transportation dispatchers. Further, the

parties stipulated that “a number of dispatchers” receive shift differential pay, amounting to 7% of their base pay, for overnight work.

In addition, the parties stipulated that the Paratransit dispatchers, Unimet dispatchers and Ambulance Transport dispatchers are eligible for referral bonuses.

TURNOUT COORDINATORS

Pitonza testified that the turnout coordinators are paid \$12 per hour, and that they do not receive a productivity bonus.

OTHER JOB CLASSIFICATIONS

The wage rates and bonuses for Unimet helpers, Unimet on-site coordinators, paramedics in the Ambulance Transportation Division, field training officers, Special Operations employees, call-takers, mechanics, and vehicle transporters were not disclosed.

BENEFITS

The record reflects that all employees have vacation and sick leave benefits, and can participate in the Employer’s 401(k) program, health insurance plan, and direct deposit. In addition, the Employer provides nursing services for employees.

UNIFORMS

Employees in the Employer’s four divisions wear similar uniforms, but there are some variations among the divisions with respect to color scheme, jackets and sweaters, and patches. All employees wear a patch that says on top, “TRANSCARE,” and on the bottom, “THE DRIVING FORCE IN HEALTH CARE,” but Bonaventure’s patch includes the words, “TC Paratransit.” Rosado wears a Transcare patch on the left and a New York State patch on the right, which includes the New York State seal and the words

“Emergency Medical Technician” and “New York State.” Drivers in the Employer’s 911/EMS Division wear additional patches, which designate the hospitals to which they are assigned.

DISCUSSION

LABOR ORGANIZATION STATUS OF INTERVENOR

Section 2(5) of the Act provides the following definition of “labor organization”:

Any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Under this definition, an incipient union which is not yet actually representing employees may be accorded Section 2(5) status if it admits employees to membership and was formed for the purpose of representing them. *See Butler Manufacturing Company*, 167 NLRB 308 (1967); *see also The East Dayton Tool & Die Company*, 194 NLRB 266 (1971). Even if such a labor organization becomes inactive without ever having represented employees, it is deemed to have been a statutory labor organization if its organizational attempts “[c]learly...envisaged participation by employees,” and if it existed “for the statutory purposes although they never came to fruition.” *Comet Rice Mills*, 195 NLRB 671, 674 (1972). Moreover, “structural formalities are not prerequisites to labor organization status.” *Yale New Haven Hospital*, 309 NLRB 363 (1992)(no constitution, by-laws, meetings or filings with the Department of Labor); *see Betances Health Unit*, 283 NLRB 369, 375 (1987)(no formal structure and no documents filed with the Department of Labor); *Butler Manufacturing Company*, 167 NLRB at 308 (no constitution, bylaws, dues or initiation fees); *East Dayton*, 194 NLRB at 266 (no constitution or officers).

In *Coinmach Laundry Corp.*, 337 NLRB 1286 (2002), the petitioning union had no office, no income and no assets. Prior to the filing of the petition, it had never been recognized by any employer or certified by the Board, and had never negotiated a collective bargaining agreement. The union's by-laws had not been finalized or signed. The petitioning union was formed at a meeting between three individuals who named themselves as officers, without an election: a recently-discharged former union president, a second individual whose employment status this former union president claimed not to know, and just one employee of the employer. 1286, 1287-88, 1288 n. 4. Nevertheless, the petitioning union was held to be a labor organization. *Coinmach*, 337 NLRB at 1286, 1287.

In the instant case, the record amply demonstrates that the Intervenor meets these minimal standards set forth in the statute, i.e., it is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning terms and conditions of employment. Accordingly, I find that the Intervenor is a labor organization as defined in section 2(5) of the Act.

APPROPRIATE UNIT

Section 9(b) provides that the Board "shall decide in each case whether...the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." In deciding whether a petitioned-for unit is appropriate, the Board starts with the premise that "the plain language of [Section 9(b) of] the act clearly indicates that the same employees of an employer may be grouped together for purposes of collective bargaining in more than one appropriate unit."

Overnite Transportation Co., 322 NLRB 723 (1996). Accordingly, it is well-established

that “there is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act only requires that the unit be ‘appropriate.’” *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950)(emphasis in original), *enf’d*, 190 F.2d 576 (7th Cir. 1951).

In making unit determinations, the Board “examine[s] first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, and also has discretion to select an appropriate unit that is different from the alternative proposals of the parties. The Board generally attempts to select a unit that is the ‘smallest appropriate unit’ encompassing the petitioned-for classifications.” *Overnite Transportation Company*, 331 NLRB 662, 663 (2000)(internal citations omitted). However, “[i]t is well established that the Board does not approve fractured units, i.e., combinations of employees that are too narrow in scope or that have no rational basis.” *Seaboard Marine*, 327 NLRB at 556 (citing *Colorado National Bank of Denver*, 204 NLRB 243 (1973)).

The criteria applied by the Board in making unit determinations include “distinctions in skills and functions of particular employee groups, their separate supervision, the employer’s organizational structure and differences in wages and hours, as well as integration of operations, and employee transfers, interchange and contacts.” *Atlanta Hilton and Towers*, 273 NLRB 87, 90 (1984); *see also Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). Additional relevant factors include fringe benefits and other working conditions, work location, degree of centralized control over the employer’s day-to-day operations and personnel policies, the extent of organization, and previous

bargaining history (or lack thereof) at the Employer. *See J.C. Penney Company, Inc.*, 328 NLRB 766 (1999); *Transerv Systems, Inc.*, 311 NLRB 766 (1993); *Allied Gear and Machine Company, Inc.*, 250 NLRB 679 (1980). By weighing these various factors, the Board determines whether the employees in the proposed unit “share a sufficiently distinct community of interest from other employees as to warrant a separate unit,” *Transerv*, 311 NLRB at 766, or conversely, whether other employees share such a strong community of interest with the employees in the proposed unit that their inclusion in the unit is required. *J.C. Penney*, 328 NLRB at 766.

The same considerations apply to unit determinations involving multi-location employers; additional factors include the geographical relationship among the facilities involved and the extent of local autonomy, balanced against the extent of centralized control over daily operations, personnel and labor relations. *See, e.g., Novato Disposal Services, Inc.*, 328 NLRB No. 118 (1999); *R & D Trucking*, 327 NLRB 531 (1999); *Passavant Retirement and Health Center*, 313 NLRB 1216 (1994); *Globe Furniture Rentals, Inc.*, 298 NLRB 288 (1990); *Twenty-First Century Restaurant of Nostrand Avenue, Licensee of McDonald’s Corporation*, 192 NLRB 881 (1971); *Davis Cafeteria*, 160 NLRB 1141 (1966); *Sav-On Drugs, Inc.*, 138 NLRB 1033 (1962); *Barber-Colman Company*, 130 NLRB 478 (1961).

A petitioned-for single-facility unit is presumptively appropriate, and the burden is on the party opposing that unit to present evidence overcoming the presumption. *J & L Plate*, 310 NLRB 429 (1993). To overcome the single-facility presumption, the evidence must establish that multiple facilities have been so effectively merged, or that the facilities are so functionally integrated, as to have lost their separate identities. *New*

Britain Transportation Co., 330 NLRB 397 (1999). In determining whether a single-facility bargaining unit is appropriate, the Board places great weight on employee interchange, transfers and contacts. *Courier Dispatch Group, Inc.*, 311 NLRB 728 (1993); *Esco Corporation*, 298 NLRB 837, 840 (1990); *see also St. Luke's Health System, Inc.*, 340 NLRB No. 139 (2003).

Case No. 29-RC-11482

The unit sought by the Petitioner in Case No. 29-RC-11482 consists of all full-time and regular part-time Paratransit drivers and dispatchers employed by the Employer out of its 106-15 Foster Avenue, Brooklyn, New York facility. Based on their separate supervision and training, distinct job duties, separate pay scale, the constant contacts and interactions between the Paratransit drivers and dispatchers, and the lack of temporary interchange or contacts with employees in other divisions, I conclude that the petitioned-for unit is an appropriate one. Factors such as the Employer's centralized HR Department, uniform benefits, and the substantial number of permanent transfers from the Unimet Division to the Paratransit Division, are insufficient to render the unit inappropriate, or to obliterate the Paratransit drivers' and dispatchers' separate group identity.

The Paratransit Division is the only division whose function is to fulfill a contract with the MTA. The Paratransit employees are required to comply with MTA regulations and complete MTA paperwork. They drive MTA-owned vehicles, and their assignments are set forth on an MTA manifest. They are trained separately from other employees, and report to a separate Paratransit trailer. All other divisions work out of multiple facilities,

whereas the Paratransit Division only works out of the Bank Street facility. The Paratransit Division is the only division that ceases operations at 10:30 p.m.

Further, the Paratransit employees are separately supervised, apart from one individual who is in charge of 19A compliance for both the Paratransit and Unimet divisions. Both the Paratransit drivers and the Paratransit dispatchers report to Lindel Sims, who does not oversee employees in any other division. The Paratransit Division has its own separate set of field supervisors.

In addition, although drivers have permanently transferred from the Unimet Division to the Paratransit Division, there is no evidence of temporary interchange or contacts between the Paratransit Division and other divisions. The Paratransit drivers and dispatchers do not fill in as Unimet or Ambulance Transportation drivers, as Unimet or Ambulance Transportation dispatchers, or as Unimet helpers, Unimet on-site coordinators, turnout coordinators, mechanics, call-takers, vehicle transporters, or field training officers. They can not fill in as paramedics or EMT's, because they do not have the proper training or DOH certifications, and are not qualified to administer medical care. Conversely, employees in other job classifications do not fill in for the Paratransit drivers or dispatchers.

Unlike Special Operations, and the Ambulance Transportation and 911/EMS divisions, the Employer's Paratransit Division provides no health care services.

The Employer takes the position that the smallest appropriate unit encompassing the Paratransit drivers and dispatchers consists of just one greatly expanded bargaining unit, encompassing all of the Employer's locations and divisions. In support of this position, the Employer contends that it is a health care institution under Section 2(14) of

the Act, and that “due consideration must be given to the Congressional admonition against the proliferation of units in the health care industry.”^[31] However, the Employer only cites one case, *Lifeline Mobile Medics, Inc.*, 308 NLRB 1068 (1992), in which an ambulance service was found to be a health care institution, and no cases that are directly pertinent to the Employer’s New York Non-Ambulance Operations, comprising its Paratransit and Unimet divisions. In *Lifeline Mobile Medics*, two office clericals were “the only employees remaining apart from the Employer’s 25 EMT’s,” and their job duties included dispatching work that was “integrated with the duties of the EMT’s.” *Lifeline Mobile Medics*, 308 NLRB at 1068-69. The Board held that the two office clericals had to be included in a bargaining unit of EMT’s, in light of “the small number of clericals, integrated nature of the work, high degree of contact, overlapping wages, close proximity of work stations, intertwining job mobility, and transfer of [one of the two clericals] from EMT to clerical work.” *Lifeline Mobile Medics*, 308 NLRB at 1070. Most of these considerations are not applicable to the Paratransit Division bargaining unit sought in the instant case.

Moreover, numerous Board cases cited in the Employer’s brief, in which the single-facility presumption was rebutted and a multiple location unit was found appropriate, are factually distinguishable from the instant case. For example, in *Dayton Transport Corporation*, 270 NLRB 1114 (1984), relied on by the Employer, the single-facility presumption was rebutted in light of the Employer’s highly integrated operations, centralized control over labor relations and personnel matters, the similarity of skills among employees at different terminals, and the high frequency of temporary

interchange. *Dayton Transport*, 270 NLRB at 1115-16. In the instant case, by contrast, the Paratransit Division is not functionally integrated with the other divisions, temporary transfers to other divisions are infrequent, and the Paratransit employees' job responsibilities differ from those of employees in other divisions and locations of the Employer.

Similarly, in *Eastman Interiors, Inc.*, 273 NLRB 610 (1984), also cited by the Employer, the Board found that the single-facility presumption was rebutted by "the pervasive centralized control of all labor relations and personnel matters, the high degree of functional integration, the frequent temporary and permanent transfers of sales employees among all nine facilities, the similarity of job responsibilities at the Montebello warehouse/showroom and the other facilities, and the proximity of the facilities." *Eastman*, 273 NLRB at 613. In the instant case, by contrast, the Paratransit Division is not functionally integrated with the other divisions, temporary and permanent transfers to other divisions are infrequent, and the Paratransit employees' job responsibilities differ from those of employees in other divisions and locations of the Employer.

The Employer also cites *NCR Corporation*, 236 NLRB 215 (1978), in which the requested single-branch unit was inappropriate in light of the "centralized management of labor matters at the district level, the limited personal authority of each branch or field manager, the integrated operation of the branch offices, the frequent interchange of employees, and the fact that employee functions and terms and conditions of employment are identical." *NCR*, 236 NLRB at 216. This case is distinguishable for the same reasons as *Dayton*, *Eastman*, and many other cases cited in the Employer's brief.

Accordingly, I find that the unit sought by the Petitioner, consisting of all Paratransit drivers and Paratransit dispatchers, is an appropriate one, and has a group identity separate from that of other employees.

Case No. 29-RC-11483

The bargaining unit sought by the Petitioner in Case No. 29-RC-11483 consists of all full-time and regular part-time ambulance drivers, EMT's, and dispatchers employed by the Employer out of its 106-15 Foster Avenue, Brooklyn, New York facility. The record reflects that the ambulance drivers, ^[32] EMT's, and dispatchers in the Ambulance Transportation Division are in constant contact with one another, and that their skills and responsibilities are distinct from those of employees in the Paratransit and Unimet divisions. However, for the reasons set forth below, I conclude that the petitioned for unit is inappropriate, and that the smallest appropriate unit encompassing the employees sought by the Petitioner would also have to include the following: (1) all Ambulance Transportation Division paramedics who report to the 106-15 Foster Avenue ("Bank Street") facility; (2) all Ambulance Transportation Division EMT's and paramedics who report to the Manhattan and Mount Vernon facilities; (3) all Special Operations EMT's and paramedics; and (4) all turnout coordinators at the Bank Street facility.

I further find that the unit in 29-RC-11483 is not rendered inappropriate by virtue of the exclusion of the following: (1) Paratransit drivers and dispatchers; (2) Ambulance Transportation Division EMT's and paramedics who report to the Amityville facility; (3) 911/EMS Division EMT's and paramedics; (4) mechanics, call-takers, vehicle transporters, and field training officers; and (5) Unimet Division drivers, helpers, on-site coordinators, and dispatchers.

Ambulance Transportation Division Paramedics Who Report to the Bank Street Facility

The record reflects that the ambulance crew on an ALS ambulance in the Ambulance Transportation Division generally consists of a paramedic and an EMT. The EMT drives the ambulance, and assists the paramedic in carrying stretchers and providing medical care to patients. Thus, an EMT assigned to an ALS ambulance is likely to have more day-to-day interaction with the paramedic assigned to his ambulance than with any other employee. Although paramedics have more medical training than EMT's, their job duties overlap with respect to providing medical care. It appears from the record that EMT's and paramedics in the Ambulance Transportation Division have shared supervision.

In addition, there is frequent temporary interchange among the EMT's, paramedics and dispatchers in the Ambulance Transportation Division, with employees in these job classifications filling in for one another on a daily basis.^[33] With regard to permanent interchange, the Employer has a program, or "Trak," for EMT's who wish to become paramedics, but it appears that only a small number of employees have taken advantage of this program. The rates of pay for paramedics in the Ambulance Transportation Division were not disclosed.

Based on the overall record, I find that the EMT's and paramedics in the Ambulance Transportation Division have overlapping job duties, shared supervision, and frequent temporary interchange. Moreover, there is constant interaction between EMT's and paramedics assigned as partners to the same ALS ambulance. Accordingly, I find that the exclusion of paramedics in the Ambulance Transportation Division from a unit that includes EMT's in the same division would render the unit inappropriate.

Ambulance Transportation Division EMT's and Paramedics Who Report to the Manhattan and Mount Vernon Facilities

The record reflects that there is a substantial amount of temporary interchange among the EMT's and paramedics reporting to the Brooklyn ("Bank Street"), Manhattan and Mount Vernon facilities, and between them and the Ambulance Transportation dispatchers reporting to the Bank Street facility. The job descriptions, training, and rates of pay for the three job classifications do not vary in accordance with job location. In addition, there is a substantial amount of permanent interchange among these facilities, particularly between the Brooklyn and Manhattan turnout facilities. However, there is very little interchange between the Amityville facility and the other facilities.

In addition, the record reflects that there is some degree of overlapping supervision. For example, Sannon handles scheduling for both the Brooklyn and Manhattan ambulance crews. The ALS Coordinator is responsible for ALS services throughout the company. The field supervisors are primarily assigned to cover a particular location, but they travel among locations as needed. Sawyer primarily covers Manhattan, but she oversees Brooklyn ambulances performing Manhattan calls. This occurs frequently, because there are not enough Manhattan ambulances to cover the high volume of Manhattan calls. She once issued a disciplinary warning to Rosado, a Brooklyn EMT. When members of ambulance crews are absent, Sawyer forms new crews, sometimes combining two employees who usually report to Manhattan and Brooklyn, or Manhattan and Mount Vernon.

In light of the substantial interchange, contacts and shared supervision among EMT's and paramedics reporting to the Employer's Brooklyn, Manhattan and Mount Vernon locations, I conclude that the Brooklyn EMT's and paramedics lack a separate

group identity, separate from that of the Manhattan and Mount Vernon EMT's and paramedics. Accordingly, I find that the exclusion of Manhattan and Mount Vernon EMT's and paramedics from the bargaining unit would render the unit inappropriate. However, on this record, I find no basis for requiring the inclusion of the Amityville EMT's and paramedics in the bargaining unit.

Ambulance Transportation Division Dispatchers

The record reflects that the Ambulance Transportation Division dispatchers are in constant contact with the Ambulance Transportation Division EMT's and paramedics. In addition, there is a substantial amount of temporary and permanent interchange between the dispatchers, EMT's and paramedics within the Ambulance Transportation Division. By contrast, there is very little interchange between the Ambulance Transportation Division dispatchers and the dispatchers in other divisions. The Ambulance Transportation Division dispatchers are separately trained, and it appears from the record that their direct supervision is separate from that of the Paratransit or Unimet dispatchers. Accordingly, I conclude that the Ambulance Transportation Division dispatchers are appropriately included in the unit, and the Unimet and Paratransit Division dispatchers are appropriately excluded from the unit.

Special Operations

It is not clear from the record whether Special Operations is part of the Ambulance Transportation Division, or a separate division, but it appears that Special Operations is too small to function independently from the Ambulance Transportation Division. The record reflects that only a "handful" of ambulance personnel are permanently assigned to Special Operations. Typically, coverage for a Special

Operations event consists of BLS ambulance crews made up of EMT's from Special Operations, supplemented by BLS ambulance crews made up of EMT's from the Ambulance Transportation Division who normally report to the turnout locations in Brooklyn, Manhattan and Mount Vernon. Thus, there is substantial integration of operations and temporary interchange between the petitioned-for unit and Special Operations.

There is also some evidence of permanent interchange, with several Bank Street EMT's in the Ambulance Transportation Division transferring into Special Operations, during a seven-month period in 2007. In addition, it appears from the record that the Special Operations employees have the same training and qualifications as those of employees in the Ambulance Transportation Division. The record does not reveal who supervises the Special Operations employees.

In light of the evidence of temporary and permanent interchange, integration of operations, similar job duties and qualifications, I conclude that the Special Operations EMT's and paramedics should be included the petitioned-for unit.

Turnout Coordinators

The record reflects that the turnout coordinators spend most of their time doing Ambulance Transportation Division work. They are in contact with the ambulance crews during the turnout and turn-in processes, as well as during the ambulance crews' shifts, when the turnout coordinators provide assistance and information, and act as conduits between the Ambulance Transportation dispatchers and ambulance crews.

In addition, the turnout coordinators and EMT's have overlapping skills and credentials, and fill in for each other when there are absences or busy periods. Three of

the Employer's eight turnout coordinators are former EMT's, who were transferred into their current positions.

Moreover, the average rate of pay for both the turnout coordinators and the Ambulance Transportation Division EMT's is identical, \$12 per hour. At the Bank Street facility, the individuals who supervise the three turnout coordinators at that facility also supervise the Ambulance Transportation crews.

However, there are currently no turnout coordinators at the Mount Vernon turnout facility, and the record does not disclose whether there are any turnout coordinators at the Manhattan turnout facility. A number of turnout coordinators work in Amityville, but it is not clear from the record whether they have any contact with ambulance crews other than those from the Amityville, whom I have excluded from the bargaining unit.

Based on the foregoing, I conclude that the three turnout coordinators at the Bank Street facility should be included in the bargaining unit.

911/EMS DIVISION EMT'S AND PARAMEDICS

The record reflects that there is some degree of temporary interchange between the Ambulance Transportation and 911/EMS divisions, with individuals in the two divisions filling in for one another approximately once a week. However, in the absence of any information regarding the approximate number of employees in the 911/EMS Division, the significance of this degree of interchange becomes more difficult to evaluate. Moreover, in the example provided by Sawyer, in which she temporarily moved an Ambulance Transportation Division employee to a 911 ambulance, she specified that this individual had to be qualified for 911 work. The record reflects that Ambulance Transportation employees who wish to transfer to 911/EMS need six months

of experience, and an unspecified amount of additional training. This additional training requirement apparently places a limitation on the number of Ambulance Transportation Division employees who are capable of filling in for 911/EMS employees.

The additional training requirement seems to be reflected in the relative rates of pay for 911/EMS and Ambulance Transportation employees. O'Connor testified that in the 911/EMS Division, EMT's earn an average of \$18 to \$19 per hour, and paramedics earn an average of \$23 to \$25 per hour. By contrast, O'Connor testified that EMT's in the Ambulance Transportation Division earn an average of \$12 per hour. Rosado earns \$10 per hour. The pay rates for paramedics in the Ambulance Transportation Division were not disclosed.

Moreover, the 911/EMS employees report to work at hospitals, whereas the Ambulance Transportation Division employees report to the Employer's turnout facilities. The two groups of employees are organized into completely separate divisions. Further, the record is unclear as to who supervises the 911/EMS Division employees, particularly in the sense of meeting the definition of supervisor set forth in Section 2(11) of the Act. Thus, the record fails to establish that the Ambulance Transportation Division employees and 911/EMS employees have shared supervision.

Based on all of the factors summarized above, I conclude that the 911/EMS Division EMT's and paramedics have a distinct group identity from that of the Ambulance Transportation Division employees, and that their exclusion from the petitioned-for unit does not render the unit inappropriate.

MECHANICS/FLEET MAINTENANCE

The record reflects that the mechanics have only minimal contact with the ambulance crews. There is no evidence of interchange among the mechanics and the Ambulance Transportation Division employees. Their skills, functions and job qualifications are distinct, and the ambulance crews are trained separately. The record does not disclose whether the mechanics' work schedules or rates of pay are similar to those of the ambulance crews. Further, the record fails to establish that the mechanics and ambulance crews have shared supervision. Although the back-up manager for the Mount Vernon Fleet Maintenance Department is also an Operations supervisor in Mount Vernon, "Operations" was never defined.

Based on the above factors, I conclude that the exclusion of the mechanics from the petitioned-for unit does not render the unit inappropriate.

FIELD TRAINING OFFICERS

The record reflects that the Field Training Officers are credentialed as EMT's and paramedics. However, there is no evidence that employees in the petitioned-for unit have any further contact with the Field Training Officers, after their initial training is completed. There is no evidence of temporary or permanent interchange, or shared supervision. Further, it appears from the record that the Field Training Officers are more highly paid than employees in the petitioned-for unit.

Accordingly, I find that the exclusion of the Field Training Officers from the petitioned-for unit does not render the unit inappropriate.

VEHICLE TRANSPORTERS

The record reflects that the vehicle transporters and ambulance crews have distinct skills, functions and qualifications. There is no evidence of any shared

supervision or training. The record does not disclose whether the vehicle transporters' work schedules or rates of pay are similar to those of the ambulance crews. Apart from one occurrence, when a Manhattan EMT and a vehicle transporter worked as partners for one day, there is no evidence of contacts or interchange between the vehicle transporters and the EMT's.

Based on the above factors, I conclude that the exclusion of the vehicle transporters from the petitioned-for unit does not render the unit inappropriate.

CALL-TAKERS

The call-takers take orders from patients, and enter the information into the computer system so that it can be accessed by the Dispatch Center. There is no further evidence of contacts or interchange between the call-takers and the Ambulance Transportation Division dispatchers, or between the call-takers and the ambulance crews. Nor is there evidence of shared supervision or training, or common skills, functions, qualifications, working schedules, or rates of pay.

Based on the above factors, I conclude that the exclusion of the call-takers from the petitioned-for unit does not render the unit inappropriate.

Paratransit and Unimet Divisions

For the reasons discussed in connection with Case No. 29-RC-11482, I find that the exclusion of Paratransit drivers and Paratransit dispatchers from the unit in Case No. 29-RC-11483 does not render the latter unit inappropriate.

As discussed below, I have concluded that the separate Unimet bargaining unit sought by the Petitioner in Case No. 29-RC-11484 is an appropriate one, and that the

exclusion of Unimet employees from the unit in Case No. 29-RC-11483 does not render the unit appropriate.

Case No. 29-RC-11484:

The unit sought by the Petitioner in Case No. 29-RC-11484 consists of all full-time and regular part-time ambulette drivers and dispatchers employed by the Employer out of its 106-15 Foster Avenue, Brooklyn, New York facility. I find that the petitioned-for unit is an appropriate one, with the addition of the Unimet helpers.

The record reflects that the Unimet ambulette drivers and dispatchers are in constant contact with one another, throughout the day. The Unimet helpers are partnered with Unimet drivers with whom they work closely, before ultimately becoming Unimet drivers themselves when they obtain the proper credentials.

The Unimet employees are organized into a separate division, and there is no evidence of temporary interchange with employees in other divisions. The Unimet drivers, helpers and dispatchers do not fill in for employees in other job classifications, and employees in other job classifications do not fill in for them. Although a number of Unimet drivers have transferred to the Paratransit Division, the Unimet and Paratransit drivers are trained and supervised separately, perform different functions, and have separate pay scales and work schedules. Unlike the Unimet drivers, the Paratransit drivers must comply with MTA regulations, guidelines and paperwork requirements.

The record reflects that the Unimet and Ambulance Transportation divisions have some supervisors in common. In addition, the Unimet drivers and ambulance crews sometimes help each other with moving patients. However, the job functions and qualifications of the Unimet drivers and the Ambulance Transportation employees are

distinct. Most significantly, the EMT's and paramedics are certified by the DOH to provide certain types of medical care to patients; the Unimet drivers are not. The Ambulance Transportation employees have a separate pay scale, with the top of the scale for EMT's at \$23.11 per hour. By contrast, the top rate of pay for Unimet ambulette drivers is \$13 per hour.

Although one Unimet dispatcher became an Ambulance Transportation dispatcher last year, there is no evidence of any other interchange among dispatchers in different divisions, who are trained and supervised separately.

With regard to the call-takers, mechanics, vehicle transporters, and field training officers, there is insufficient evidence of interchange, contacts, shared supervision or training, common job functions, or similar work schedules or rates of pay, to require their inclusion in the Unimet bargaining unit.

There is insufficient evidence to evaluate the extent of the contacts between the Unimet on-site coordinators and the other Unimet Division employees. In addition, there is no evidence of temporary or permanent interchange between the Unimet employees at the Bank Street location, and Unimet employees at other locations of the Employer.

Based on all of the foregoing considerations, I find that the Unimet drivers, helpers and dispatchers at the Bank Street facility constitute a separate appropriate unit.

CONCLUSIONS AND FINDINGS

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The Employer and Intervenor agreed to the following commerce stipulation, with the highlighted language included. The Petitioner agreed to the stipulation, with the highlighted language omitted:

Transcare, New York, Inc., herein called the Employer, is a Delaware corporation with its principal office and a place of business located at 5811 Foster Avenue, Brooklyn, New York, and is engaged in the medical transportation business ***providing critical care inter-facility transport, advanced life support transportation (“ALS”), basic life support transportation (“BLS”), 911 personnel, and ambulette and Paratransit transportation in the New York City area.*** During the past twelve month period, which period is representative of its annual operations in general, the Employer, in the course and conduct of its business operations, provided services valued in excess of \$50,000 directly to customers within the State of New York, which customers, in turn, meet the Board’s direct standard for the assertion of jurisdiction. During the past twelve month period, which period is representative of its annual operations in general, the Employer derived gross annual revenues valued in excess of \$500,000. The Employer is engaged in commerce within the meaning of the Act.

Based on the stipulations of the parties, and on the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The record reflects that Local 1181-1061, Amalgamated Transit Union, AFL-CIO and Transport Workers Union of America, AFL-CIO, Local 100, are labor organizations within the meaning of Section 2(5) of the Act, in that they are organizations in which employees participate, and because they exist, in whole or in

part, for the purpose of dealing with employers concerning wages, hours and other conditions of employment. The labor organizations involved herein claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

5. The following employees of the Employer constitute three separate appropriate bargaining units:

Case No. 29-RC-11482:

All full-time and regular part-time Paratransit Transportation Division drivers and dispatchers employed by the Employer out of its 106-15 Foster Avenue, Brooklyn, New York facility, **BUT EXCLUDING** all other employees, guards, managers and supervisors as defined in the Act.

Case No. 29-RC-11483:

All full-time and regular part-time Ambulance Transportation Division and Special Operations ambulance drivers, EMT's, paramedics, and dispatchers employed by the Employer at its facilities located at 106-15 Foster Avenue, Brooklyn, New York, 1249 5th Avenue, New York, New York, and 154 East 3rd Street, Mount Vernon, Westchester County, New York, and all full-time and regular part-time turnout coordinators employed by the Employer at its facility located at 106-15 Foster Avenue, Brooklyn, New York, **BUT EXCLUDING** all other employees, all employees employed at the facilities located at 32 Ranick Drive West, Amityville, New York, and 20 Ferris Avenue, White Plains, New York, all employees employed by the Paratransit Transportation Division, the Unimet Ambulette Wheelchair Division and the 911/EMS Division, and all mechanics, call-takers, vehicle transporters, field training officers, guards, managers and supervisors as defined in the Act.

Case No. 29-RC-11484:

All full-time and regular part-time Unimet Ambulette Wheelchair Division drivers, helpers and dispatchers employed by the Employer out of its 106-15 Foster Avenue, Brooklyn, New York facility, **BUT EXCLUDING** all other employees, guards, managers and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by Local 1181-1061, Amalgamated Transit Union, by Transport Workers Union of America, AFL-CIO, Local 100, or by neither labor organization.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters in each of the three bargaining units, shall be filed by the Employer with the undersigned. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). This list may initially be used by me to assist in determining an adequate showing of interest in Case Nos. 29-RC-11483 and 29-RC-11484. I shall, in turn, make the lists available to all parties to the election, but the portion of the list that pertains to Case Nos. 29-RC-11483 and 29-RC-11484 shall be made available only after I shall have determined that an adequate showing of interest among the employees in the units found appropriate has been established.

In order to be timely filed, the three lists must be received in the Regional Office, Two MetroTech Center, 5th Floor, Brooklyn, New York 11201 on or before **February 27, 2008**. No extension of time to file the lists may be granted, nor shall the filing of a request for review operate to stay the filing of such lists except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notices of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB No. 52 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **March 5, 2008**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlrb.gov. On

the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions

explaining how to file the documents electronically will be displayed. The request for review may not be filed by facsimile.

Dated: February 20, 2008, Brooklyn, New York.

“/s/ {Alvin P. Blyer}”

^[1] The names of the Employer and Intervenor appear as amended at the hearing.

^[2] The unit descriptions appear as amended at the hearing.

^[3] Brief of Employer at 5-6.

^[4] The Employer attempted to insert additional evidence into the record, by attaching documents to its brief after the hearing closed, without first giving the other parties the opportunity to view the documents. NLRB Casehandling Manual Part II, Representation Hearings, Section 11224.6, sets forth the proper procedure for submitting documents after the close of hearing, when the delay is shown to be unavoidable. Accordingly, I have not considered these documents in reaching my decision

^[5] At the hearing, the Intervenor indicated that it would be willing to go forward in any alternative unit or units found appropriate by the Board, should the Region determine that the petitioned-for bargaining units are inappropriate. The Petitioner indicated that it would not be willing to go forward in the alternative unit proposed by the Employer. However, the Petitioner gave several hypothetical examples of alternative bargaining units in which it would be willing to proceed. None of these hypothetical examples conforms to either of the alternative units I have found to be appropriate in Case Nos. 29-RC-11483 and 29-RC-11484.

^[6] O'Connor testified that TC Paratransit and Unimet are the d/b/a (“doing business as”) names for the Employer’s Paratransit Transportation Division and Unimet Ambulette Wheelchair Division.

^[7] O'Connor testified that his office is located at 106-15 Bank Street (not 106-15 Foster Avenue, as indicated on the petitions and on the Employer’s organizational chart). This apparent discrepancy was not clarified on the record. O'Connor stated that the Bank Street building also has a Foster Avenue entrance, to which mail is sometimes delivered.

^[8] At one point in his testimony, Pitonza made mention of “Long Island Ambulettes, which also falls under Unimet.” This may have been a reference to the ambulettes operating out of the Amityville facility.

^[9] It appears that a few ambulettes also turn out from the Manhattan facility. An exhibit furnished by the Employer indicates that for the period from June 1, 2007, through July 30, 2007, 15,734 ambulette calls

were performed by vehicles turning out of Brooklyn, 9,626 ambulette calls were performed by vehicles turning out of Amityville, 1,072 ambulette calls were performed by vehicles turning out of Mount Vernon, and 45 ambulette calls were performed by vehicles turning out of Manhattan.

^[10] The Manhattan facility occupies space rented from the Terence Cardinal Cooke Health Care Facility, a nursing home whose main entrance is at 1249 5th Avenue. The Transcare entrance is at 106th Street and Madison Avenue.

^[11] There was conflicting testimony as to whether the Paratransit Division's operating area encompasses all five boroughs of New York City, or Brooklyn and southern Queens alone. Bonaventure and Keddo testified that they have only performed Paratransit work within Brooklyn.

^[12] There was conflicting testimony as to whether the ambulettes contain First Aid kits.

^[13] The Petitioner's attorney made this estimate based on payroll records that were produced in response to a subpoena, but were not offered into evidence. The other parties did not stipulate to this estimate, but they did not disagree with it either.

^[14] O'Connor did not specifically indicate whether supervisors for the Ambulance Transportation Division also ensure that the ambulance personnel are complying with these protocols.

^[15] Although Nassau and Suffolk counties are closer to the Amityville location than they are to Bank Street, the record does not reveal whether the dispatchers in Amityville dispatch calls to any of these locations.

^[16] O'Connor did not contest this, but he testified that a "turnout person" assigns Paratransit drivers to their routes, and gives them their manifests. However, it was not clear from the record whether he was specifically referring to one of the Employer's eight turnout coordinators.

^[17] The record does not specifically disclose whether Special Operations is part of New York Ambulance Operations.

^[18] Francesco's last name is not in the record.

^[19] It is not clear from the record whether there are on-site supervisors at all three Unimet locations.

^[20] The record does not reveal Pedro's last name.

^[21] In addition, according to Ward, a supervisor named Mike Dixon spoke to him about wearing an "unauthorized baseball" cap. However, O'Connor testified that Michael Dixon is an EMT who is working on his certification as a paramedic. None of the Employer's witnesses identified Dixon as a Section 2(11) supervisor.

^[22] As indicated previously, "Operations" and "Operations supervisors" were not defined.

^[23] Rosado testified that Mejias is a field supervisor. The record does not disclose which of the other supervisors listed by Rosado are field supervisors, apart from Sawyer, who identified herself as both an Operations supervisor and a field supervisor.

^[24] As indicated above, O'Connor testified that an employee cannot be suspended or terminated without authorization from HR.

^[25] As indicated previously, "Operations" and "Operations supervisor" were not defined.

^[26] Pitonza testified that David Koneig is a field supervisor in the Ambulance Transportation Division.

^[27] It appears from the record that the EMT's who fill in for paramedics are individuals who are certified as paramedics, but who generally work as EMT's.

^[28] The record reflects that a small number of Ambulance Transportation Division ambulances at the Bank Street facility have lettering designating a particular hospital. It appears that Rosado was referring to these ambulances, and not to the 911/EMS Division ambulances, which also have hospital logos.

^[29] Yvette Brooks's position was not identified.

^[30] On the last day of the hearing, the Employer produced payroll records in response to a subpoena, and the parties entered into a number of stipulations based on these records. The records themselves were not offered into evidence, or described.

^[31] Brief of Employer at 10-16.

^[32] Since the record reflects that the ambulances are driven by EMT's, the unit description is somewhat redundant.

^[33] As noted previously, it appears from the record that the EMT's who fill in for paramedics are individuals who are certified as paramedics, but who generally work as EMT's.